SEVENTY-SIXTH DAY
(Sunday, May 28, 1989)

The Senate met at 10:00 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brooks, Brown, Caperton, Carriker, Dickson, Edwards, Glasgow, Green, Haley, Harris, Henderson, Johnson, Krier, Leedom, Lyon, McFarland, Montford, Parker, Ratliff, Santiesteban, Sims, Tejeda, Truan, Uribe, Washington, Whitmire, Zaffirini.

Absent-excused: Parmer.

A quorum was announced present.

Dr. Nancy C. Speck, Vice-President for University Advancement, Stephen F. Austin State University, Nacogdoches, offered the invocation as follows:

Our Heavenly Father, we thank Thee for this opportunity to gather to consider these matters of legislation.

We pray for Your guidance and wisdom as these leaders consider legislation that will impact our lives today and in the future.

May these decisions be pleasing to Thee.

In Christ's name we pray. Amen.

On motion of Senator Brooks and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

LEAVE OF ABSENCE

Senator Parmer was granted leave of absence for today on account of important business on motion of Senator Brooks.

BILLS AND RESOLUTIONS SIGNED

The President announced the signing in the presence of the Senate, after the captions had been read, the following enrolled bills and resolutions:

S.J.R. 71	**S.B. 359**	**S.B. 924**	**S.B. 1133**
S.J.R. 74	**S.B. 374**	**S.B. 954**	**S.B. 1270**
S.B. 144	**S.B. 463**	**S.B. 993**	**S.B. 1290**
S.B. 151	**S.B. 520**	**S.B. 1030**	**S.B. 1451**
S.B. 193	**S.B. 539**	**S.C.R. 48**	**S.B. 1479**
S.B. 196	**S.B. 657**	**S.C.R. 73**	**S.B. 1575**
S.B. 264	**S.B. 733**	**S.C.R. 78**	**S.B. 1629**
S.B. 294	**S.B. 804**	**S.C.R. 83**	**S.B. 1711**
S.B. 298	**S.B. 856**	**S.C.R. 100**	**S.B. 1735**
S.B. 344	**S.B. 908**	**S.C.R. 106**	**S.B. 1777**
S.B. 358	**S.B. 911**	**S.B. 1043**	**S.B. 1785**
			S.B. 1796

CO-AUTHOR OF SENATE BILL 234

On motion of Senator Green and by unanimous consent, Senator Zaffirini will be shown as Co-author of **S.B. 234**.

CO-AUTHORS OF SENATE CONCURRENT RESOLUTION 182

On motion of Senator Johnson and by unanimous consent, Senators Edwards and Brooks will be shown as Co-authors of **S.C.R. 182**.

CO-SPONSOR OF HOUSE BILL 27

On motion of Senator Washington and by unanimous consent, Senator Brooks will be shown as Co-sponsor of **H.B. 27**.

CO-SPONSOR OF HOUSE BILL 370

On motion of Senator Washington and by unanimous consent, Senator Whitmire will be shown as Co-sponsor of **H.B. 370**.

CO-SPONSOR OF HOUSE CONCURRENT RESOLUTION 238

On motion of Senator Washington and by unanimous consent, Senator Truan will be shown as Co-sponsor of **H.C.R. 238**.

MESSAGE FROM THE HOUSE

House Chamber
May 28, 1989

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.B. 265, Relating to the State Board of Insurance and the Department of Public Safety. (As substituted)

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

SENATE RESOLUTION 775

Senator Parker offered the following resolution:

S.R. 775, Creating the Aquatic Products Advisory Commission for the purpose of assisting the State in reviewing programs and formulating policies affecting fishing in Texas.

The resolution was read.

On motion of Senator Parker and by unanimous consent, the resolution was considered immediately and was adopted viva voce vote.

CONFERENCE COMMITTEE REPORT ON HOUSE JOINT RESOLUTION 40 ADOPTED

Senator Harris called from the President's table the Conference Committee Report on **H.J.R. 40**. (The Conference Committee Report having been filed with the Senate and read on Friday, May 26, 1989.)

On motion of Senator Harris, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Parmer.

CONFERENCE COMMITTEE ON HOUSE BILL 1023

Senator Leedom called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 1023** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **H.B. 1023** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Leedom, Chairman; Brown, Ratliff, Washington and Whitmire.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 413 ADOPTED

Senator Harris called from the President's table the Conference Committee Report on **S.B. 413**. (The Conference Committee Report having been filed with the Senate and read on Thursday, May 25, 1989.)

On motion of Senator Harris, the Conference Committee Report was adopted viva voce vote.

SENATE BILL 441 WITH HOUSE AMENDMENT

Senator Armbrister called **S.B. 441** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Local and Consent Calendars
Committee Amendment - Morales

Amend **S.B. 441** by adding a new Section 5 of the bill to read as follows and renumbering existing Section 5 of the bill as Section 6:

SECTION 5. If **H.B. No. 2335**, 71st Legislature, Regular Session, 1989, is enacted and becomes law, to the extent of any conflict between this Act and **H.B. No. 2335**, this Act controls, except that the advisory committee created under Section 5.01, Article 42.121, Code of Criminal Procedure, shall serve in an advisory capacity to the entity to which the powers, duties, and obligations of the Texas Adult Probation Commission are transferred under **H.B. No. 2335**.

The amendment was read.

Senator Armbrister moved to concur in the House amendment to **S.B. 441**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Parmer.

SENATE BILL 876 WITH HOUSE AMENDMENTS

Senator Armbrister called **S.B. 876** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment - Fraser

Amend **S.B. 876** by striking all below the enacting clause and substituting the following:

SECTION 1. Section 1(a)(5), Chapter 13, Acts of the 70th Legislature, 2nd Called Session, 1987 (Article 8871, Vernon's Texas Civil Statutes), is amended to read as follows:

(5) "Athlete" means an individual who [~~resides in this state and who:~~

[~~(A)~~] is eligible to participate in intercollegiate sports contests as a member of a football, basketball, or baseball sports team of an institution of higher education located in this state that is a member of a national association for the promotion and regulation of intercollegiate athletics[~~; or~~

[~~(B) has participated as a member of such a sports team at an institution of higher education and who has never signed a contract of employment with a professional sports team~~].

SECTION 2. Section 1, Chapter 13, Acts of the 70th Legislature, 2nd Called Session, 1987 (Article 8871, Vernon's Texas Civil Statutes), is amended by adding Subsections (c) and (d) to read as follows:

(c) For purposes of this Act, an athlete's eligibility to participate in intercollegiate sports contests ends at the end of the last sports contest in the athlete's sport of football, basketball, or baseball that is sanctioned by the athlete's institution of higher education during the athlete's final year of eligibility, as determined by the governing body of the national association for the promotion and regulation of intercollegiate athletics of which the athlete's institution of higher education is a member.

(d) A person who declares himself eligible for recruitment by a professional sports team, thereby becoming ineligible to participate in intercollegiate sports contests, is not an athlete for purposes of this Act and may be contacted by an athlete agent without compliance by the agent with the requirements of this Act. If the person later becomes eligible to participate in intercollegiate sports, the person is again an athlete for purposes of this Act, and any contact with the person by an athlete agent is subject to the requirements of this Act.

SECTION 3. Section 3, Chapter 13, Acts of the 70th Legislature, 2nd Called Session, 1987 (Article 8871, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. POWERS AND DUTIES OF SECRETARY OF STATE; DISCIPLINARY ACTIONS. (a) The secretary of state shall actively enforce this Act and conduct investigations as necessary to ensure compliance.

(b) If the secretary of state determines that a violation has occurred, the secretary of state shall refer the case to the attorney general for prosecution and take disciplinary action under Subsection (e) of this section. On the determination of the secretary of state that a violation is occurring or is threatened, the secretary of state or attorney general may bring an action in district court in Travis County to enjoin the violation or threatened violation.

(c) On receipt of a written request by a registered athlete agent, the secretary of state shall provide the agent the names of the compliance coordinators designated under Section 7(e) of this Act and also shall provide on request a copy of the standards adopted by an institution of higher education under Section 7(f) of this Act.

(d) The secretary of state shall publish information that prescribes the compliance responsibilities under this Act of an institution of higher education and shall mail copies of the information to the athletic director or other appropriate official at each institution of higher education, return receipt requested. The secretary of state shall update the material as necessary.

(e) The secretary of state may deny a certificate of registration to an applicant who has been convicted of a felony or of a misdemeanor involving moral turpitude, and may deny, suspend, or revoke a certificate of registration issued under this Act

for a violation of this Act or a rule adopted under this Act or [~~may~~] take other disciplinary actions. A denial of a certificate of registration or a disciplinary action under this Act is subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 4. Sections 6(b) and (c), Section 6, Chapter 13, Acts of the 70th Legislature, 2nd Called Session, 1987 (Article 8871, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) A registered athlete agent may not:

(1) publish or cause to be published any false, fraudulent, or misleading information, representation, notice, or advertisement or give any false information or make any false promises or representations concerning any employment to any person;

(2) divide fees with or receive compensation from a professional sports league or franchise or its representative or employee;

(3) enter into any agreement, written or oral, by which the athlete agent offers anything of value to any employee of an institution of higher education located in this state in return for the referral of any clients by that employee;

(4) offer anything of value, excluding reasonable entertainment expenses and transportation expenses to and from the athlete agent's registered principal place of business, to induce an athlete to enter into an agreement by which the athlete agent will represent the athlete; or

(5) except as otherwise provided by [~~Section 7 of~~] this Act, directly contact an athlete who is participating in a team sport at an institution of higher education located in this state to discuss the athlete agent's representation of the athlete in the marketing of the athlete's athletic ability or reputation or the provision of financial services by the athlete agent, or enter into any agreement, written or oral, by which the athlete agent will represent the athlete, until after completion of the athlete's last intercollegiate contest, including postseason games, and may not enter into an agreement before the athlete's last intercollegiate contest that purports to take effect at a time after that contest is completed.

(c) Except as provided by this Act, an athlete agent may not contact an athlete, either directly or indirectly, in writing or orally, to solicit business. An athlete may contact an athlete agent at any time. [~~This Act does not prohibit or limit an athlete agent from sending to an athlete written materials relating to the professional credentials of the agent or to specific services offered by the agent relating to the representation of an athlete in the marketing of an athlete's athletic ability or reputation or to the provision of financial services by the agent to the athlete. This Act does not prohibit an athlete or the athlete's parents, legal guardians, or other advisors from contacting and interviewing an athlete agent to determine that agent's professional proficiency in the representation of an athlete, in the marketing of the athlete's athletic ability or reputation, or the provision of financial services by the agent on behalf of the athlete.~~]

SECTION 5. Section 7, Chapter 13, Acts of the 70th Legislature, 2nd Called Session, 1987 (Article 8871, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7. PERMITTED CONTACTS WITH CERTAIN ATHLETES; COMPLIANCE COORDINATOR; STANDARDS. (a) Each institution [~~All institutions~~] of higher education located in this state shall sponsor athlete agent interviews on its campus at which [~~their campuses before the athlete's final year of eligibility to participate in intercollegiate athletics, and~~] a registered athlete agent may interview an [~~the~~] athlete to discuss the athlete agent's provision of financial services and advice to the athlete or the athlete agent's representation of the athlete in the marketing of the athlete's athletic ability or reputation. The interviews are subject to the requirements of this section.

(b) The secretary of state [~~All institutions sponsoring athlete agent interviews~~] shall notify each registered athlete agent in writing that copies of the standards adopted by an institution of higher education relating to the conduct of athlete agent interviews at that institution are available from the secretary of state as provided by Section 3(c) of this Act. The notice must include a brief statement that the standards adopted by an institution of higher education specify the policies of that institution relating to [~~give public notice of those interviews not later than the 30th day before the date on which the period in which the interviews may be conducted begins. Institutions shall provide written notice of~~] the time, place, and duration of [~~the~~] athlete agent interviews at the campuses of that institution and that each institution has a designated compliance coordinator who may be contacted by the agent for further information [~~interview program to those registered athlete agents who have previously furnished the athletic director of such institutions with their addresses~~].

(c) The athlete agent shall strictly adhere to the specific rules of each separate [~~electing~~] institution with regard to the time, place, and duration of the athlete agent interviews. The interviews must be conducted [~~in the final year of eligibility~~] during a period of at least five but not more than [~~not to exceed~~] 30 consecutive business days, and, as designated by the institution, must be conducted either:

(1) during the off-season training period for the athlete's sport that immediately precedes the athlete's final year of eligibility; or

(2) during the period between the date of the last sports contest in the athlete's sport of football, basketball, or baseball during the athlete's final year of eligibility, including postseason contests, and the date on which the athlete's enrollment at the institution of higher education ends.

(d) The signing of an athlete agent contract or financial services contract by an athlete may occur at any time permitted by the rules or regulations of the national association for the promotion and regulation of intercollegiate athletics of which the athlete's institution of higher education is a member.

(e) Each institution of higher education in this state shall designate an individual to serve as compliance coordinator for the institution. The institution shall report the name of its compliance coordinator to the secretary of state in the manner prescribed by the secretary of state. The compliance coordinator shall organize the athlete interview schedule for the coordinator's campus and shall ensure the compliance of the institution and its athletes with this Act and the rules adopted under this Act. The compliance coordinator shall post public notice of the interview period not later than the 30th day before the date on which the interview period is scheduled to begin. On receipt of a written request, the compliance coordinator shall provide a registered athlete agent with a copy of the standards adopted by the institution under Subsection (f) of this section and a copy of the notice as posted.

(f) Each institution of higher education shall adopt standards relating to the implementation of this Act at that institution. The standards must include specific guidelines relating to the athlete agent interview program, including the scheduling of interview periods, the duration of an interview period, locations on campus at which interviews may be conducted, and the terms and conditions under which an athlete agent may contact an athlete during an interview period. The institution shall submit the standards to the institution's athletic council or analogous office for approval and shall file the standards with the secretary of state not later than the 30th day after the date on which the standards are approved. If the institution amends the standards, it shall file the amended standards with the secretary of state not later than the 30th day after the effective date of the amendments.

SECTION 6. Section 8, Chapter 13, Acts of the 70th Legislature, 2nd Called Session, 1987 (Article 8871, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 8. REMEDIES FOR VIOLATION; CRIMINAL PENALTY. (a) A registered athlete agent who violates [~~Subsection (a) of Section 2 or Section 6 of~~] this Act may be subject to:

(1) a civil penalty, as provided by Section 9 of this Act;

(2) forfeiture of any right of repayment for anything of value either received by an athlete as an inducement to enter into any agent contract or financial services contract or received by an athlete before completion of the athlete's last intercollegiate contest;

(3) a refund of any consideration paid to the athlete agent on an athlete's behalf; and

(4) reasonable attorney's fees and court costs incurred by an athlete in suing and recovering against an athlete agent for a violation of this Act.

(b) Any agent contract or financial services contract that is negotiated by an unregistered athlete agent [~~who has failed to comply with this Act~~] is void.

(c) An athlete agent commits an offense if the agent intentionally or knowingly violates [~~Subsection (a) of Section 2 or Section 6 of~~] this Act or a rule adopted under this Act. An offense under this subsecton is a Class A misdemeanor.

SECTION 7. Chapter 13, Acts of the 70th Legislature, 2nd Called Session, 1987 (Article 8871, Vernon's Texas Civil Statutes), is amended by adding Section 8A to read as follows:

Sec. 8A. CIVIL ACTION BY INSTITUTION. (a) An institution of higher education that is adversely affected by activities of an athlete agent that violate this Act may sue the athlete agent for damages as provided by this section.

(b) For purposes of this section, an institution of higher education is adversely affected by the activities of an athlete agent if, because of the activities of the athlete agent, the institution is disqualified or suspended from participation in intercollegiate sports contests by a national association for the promotion and regulation of intercollegiate athletics, and because of that disqualification or suspension, loses revenue from media coverage of sports contests, is unable to recruit athletes, or otherwise suffers an adverse financial impact.

(c) An institution that prevails in a suit brought under this section may recover:

(1) actual damages;

(2) exemplary damages;

(3) costs of court; and

(4) reasonable attorney's fees.

SECTION 8. Section 9(b), Chapter 13, Acts of the 70th Legislature, 2nd Called Session, 1987 (Article 8871, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The secretary of state may assess the civil penalty in an amount not to exceed $50,000 [~~$10,000~~]. In determining the amount of the penalty, the secretary shall consider the seriousness of the violation.

SECTION 9. Sections 2(h), (i), and (j), Chapter 13, Acts of the 70th Legislature, 2nd Called Session, 1987 (Article 8871, Vernon's Texas Civil Statutes), are repealed.

SECTION 10. (a) This Act takes effect September 1, 1989.

(b) Sections 8(a) and (b), Chapter 13, Acts of the 70th Legislature, 2nd Called Session, 1987 (Article 8871, Vernon's Texas Civil Statutes), as amended by this Act, apply only to a violation that occurs on or after September 1, 1989. A violation that occurs before September 1, 1989, is governed by the law in effect on the date that the violation occurred, and the former law is continued in effect for that purpose.

(c) The change in law made by the amendment of Section 8(c), Chapter 13, Acts of the 70th Legislature, 2nd Called Session, 1987 (Article 8871, Vernon's Texas Civil Statutes), by Section 6 of this Act, applies only to an offense committed on or after the effective date of this Act. For the purposes of this subsection, an offense

is committed before the effective date of this Act if any element of the offense occurs before that date. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

(d) The change in law made by Section 8 of this Act applies only to the assessment of a civil penalty for a violation that occurs on or after the effective date of this Act.

(e) An institution of higher education shall submit to the secretary of state the standards adopted by the institution under Section 7(f), Chapter 13, Acts of the 70th Legislature, 2nd Called Session, 1987 (Article 8871, Vernon's Texas Civil Statutes), as added by this Act, not later than February 1, 1990.

(f) The secretary of state shall send the information required under Section 3(d), Chapter 13, Acts of the 70th Legislature, 2nd Called Session, 1987 (Article 8871, Vernon's Texas Civil Statutes), as added by this Act, not later than December 1, 1989.

SECTION 11. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1 - Connelly

Amend **C.S.S.B. 876** as follows:

On page 1, lines 11-12, strike "football, basketball, or baseball" and substitute "football or basketball".

On page 2, lines 1-2, strike "football, basketball, or baseball" and substitute "football or basketball".

On page 4, lines 21-22, strike "a team sport" and substitute "football or basketball".

On page 7, lines 9-10, strike "football, basketball, or baseball" and substitute "football or basketball".

Floor Amendment No. 2 - Connelly

Amend **C.S.S.B. 876** as follows:

On page 3, line 26, strike "Sections 6(b) and (c)" and substitute "Section 6(b)".

On page 5, strike lines 5-19.

The amendments were read.

On motion of Senator Armbrister and by unanimous consent, the Senate concurred in the House amendments to **S.B. 867** viva voce vote.

SENATE BILL 269 WITH HOUSE AMENDMENT

Senator Armbrister called **S.B. 269** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment - Carter

Amend **S.B. 269** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Section 415.010, Government Code, is amended to read as follows:

Sec. 415.010. GENERAL POWERS. The commission may:

(1) adopt rules for the administration of this chapter and for the commission's internal management and control;

(2) employ an executive director and other personnel necessary in the performance of commission functions;

(3) accept donations, contributions, grants, or gifts from private individuals, foundations, or the federal government;

(4) report to the governor and legislature on its activities, with recommendations on matters under its jurisdiction, and make other reports that it considers desirable;

(5) establish reasonable and necessary fees for the administration of this chapter;

(6) require the submission of reports and information by a state agency or a county, special district, or municipality in this state that employs officers or county jailers;

(7) contract with other persons as the commission considers necessary for services, facilities, studies, and reports required for:

(A) cooperation with municipal, county, special district, state, and federal law enforcement agencies in training programs; and

(B) performance of the commission's other functions;

(8) make or encourage studies of law enforcement, including police administration;

(9) conduct research to improve law enforcement and police administration and stimulate research by public and private agencies for that purpose; [~~and~~]

(10) establish minimum standards relating to competence and reliability, including educational, training, physical, mental, and moral standards, for licensing as an officer or county jailer;

(11) adopt rules to administer the peace officer college loan program; and

(12) adopt rules relating to the minimum standards for retention of a license issued by the commission, which standards must include the repayment of a loan obtained under Subchapter E.

SECTION 2. Section 415.084(c), Government Code, is amended to read as follows:

(c) Money remaining in the law enforcement officer standards and education fund at the end of the state fiscal year, except funds appropriated to the commission and funds received as a repayment of principal or interest under the peace officer college loan program, shall be transferred to the general revenue fund.

SECTION 3. Chapter 415, Government Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. PEACE OFFICER COLLEGE LOAN PROGRAM

Sec. 415.101. DEFINITIONS. In this subchapter:

(1) "Full assistance" means tuition assistance and payment of reasonable living expenses.

(2) "Participating institution" means an institution of higher education as that term is defined by Section 61.003, Education Code, that agrees to comply with this subchapter and any applicable commission rule.

(3) "Peace officer" means a person serving under an appointment as a full-time peace officer in this state.

(4) "Program" means the peace officer college loan program.

(5) "Prospective peace officer" means a person who:

(A) is not a peace officer on the date on which a loan is made to the person under this subchapter and has not been a peace officer before that date;

(B) is enrolled or accepted for enrollment in a participating institution in a program of study leading to a degree; and

(C) intends to become a peace officer.

(6) "Recipient" means a person who has received or has been approved to receive a loan under the program.

(7) "Tuition assistance" means payment of tuition and fees and the cost of books and other similar education expenses. The term does not include payment of living expenses.

Sec. 415.102. PROGRAM. The peace officer college loan program is created to provide tuition assistance to peace officers and assistance for tuition and other necessary expenses to prospective peace officers while attending a participating institution. The commission shall administer the program and adopt rules to govern the program and to implement the purposes of this subchapter. The rules shall provide for:

(1) application, eligibility, retention, and reporting requirements for a recipient of a tuition assistance loan or a full assistance loan or for a loan cancellation;

(2) the suspension of the license of a licensee who defaults on a loan obtained under this subchapter;

(3) review of all pending loan applications at least twice each calendar year;

(4) limits on annual and cumulative amounts loaned to individual recipients, participating institutions, and agencies;

(5) interest rates not to exceed three percent more than the prime interest rate on the date on which the loan is made and the periods of repayment;

(6) reasonable terms of coverage and payment amounts for tuition and full assistance loans;

(7) allocation of loan funds between peace officers and prospective peace officers;

(8) definition of the terms "prior service," "subsequent service," and "full-time service";

(9) grace periods and terms of loan payment and repayment;

(10) loan cancellation provisions;

(11) life insurance fee requirements; and

(12) application, eligibility, retention, and reporting requirements for each participating institution.

Sec. 415.103. PROGRAM REQUIREMENTS. (a) A person may not be a loan recipient unless that person is:

(1) a peace officer or a prospective peace officer; and

(2) a Texas resident eligible for in-state tuition who meets all the other requirements established by the commission under this subchapter.

(b) Repayment of principal and interest is deferred while the recipient is enrolled at a participating institution in a program of study leading to a degree.

(c) Before a loan is made to a person, that person must execute a note payable to the law enforcement officer standards and education fund for the full amount of the authorized loan plus interest. A loan repayment of principal or interest shall be made directly to the commission for deposit in the fund.

(d) Each recipient shall submit a grade report to the commission at the end of each regular semester or summer term covered by the loan.

(e) The commission may contract with an insurance carrier licensed to do business in this state for insurance on the life of a recipient in an amount sufficient to retire the outstanding principal and interest owed under a program loan. The recipient shall pay a fee to offset the full cost of the insurance.

(f) During a biennium, the total amount allocated for tuition assistance loans to peace officers may not exceed the greater of:

(1) 30 percent of the total amount appropriated for loans; or

(2) the balance of the total amount appropriated for loans but unused by prospective peace officers, computed on the day after the date on which the loans were last reviewed.

(g) The commission shall:

(1) actively recruit loan applicants who intend to be prospective peace officers by informing students and counselors of local school districts and participating institutions about the availability of the college loan program; and

(2) focus recruiting efforts on students who would not otherwise begin or complete their college studies.

(h) The amount included in a full assistance loan for reasonable living expenses may not exceed $2,000 for each semester.

(i) A person is not eligible for a loan or for loan cancellation beginning on the date on which the person first defaults on a loan obtained under this subchapter.

(j) Loan cancellation rates shall be computed according to the number of complete calendar years of prior or subsequent service as a peace officer by the recipient and on any other terms set by the commission.

(k) The amount of principal of a tuition assistance loan that is canceled may not exceed the tuition for 15 semester hours of credit for each year of prior or subsequent service as a peace officer. When computing the amount to be canceled, the tuition assistance provided by the loan for each semester hour completed is canceled in the order in which the tuition was paid. No interest shall be charged for a tuition or full assistance loan to a recipient so long as the recipient is employed as a peace officer. If the recipient is not employed as a peace officer, interest on the tuition or full assistance loan shall be paid as set by the commission in accordance with Section 415.102.

(l) A peace officer who obtains a tuition assistance loan may:

(1) apply for loan cancellation of both the principal and interest portion of the loan if the officer has served as a peace officer for at least two years; or

(2) apply for loan cancellation of the interest portion only if the officer has served as a peace officer for less than two years.

(m) A peace officer who obtained, while a prospective peace officer, a tuition or a full assistance loan may apply for loan cancellation of the interest portion only.

Sec. 415.104. AUDIT; ANNUAL REPORT. (a) Each transaction under this subchapter is subject to audit by the state auditor.

(b) The commission shall report on the operations of the program to the governor annually and to the legislature not later than December 1 of each even-numbered year.

(c) The report must include by fiscal year for the state as a whole and for each participating institution:

(1) the number of loans;

(2) the maximum and minimum loan amounts;

(3) the total amount of outstanding loans;

(4) the amount of loan cancellations;

(5) the law enforcement agencies represented;

(6) a list of any defaulting recipients, showing the amount due and the person's last known address; and

(7) any other information necessary to describe the effectiveness of the program.

Sec. 415.105. DEFAULT. (a) After failure or refusal to make six or more monthly payments on a loan, a recipient is in default, and the full amount of the

remaining unpaid principal of and earned interest on that loan becomes due and payable immediately, and any loan cancellation already granted must be rescinded. The commission shall provide sufficient information to the attorney general to file suit for the remaining sum as provided by Section 415.016.

(b) To the extent allowed by law, each agency or political subdivision of the state shall cooperate with the commission in an attempt to collect on a defaulted loan.

SECTION 4. Chapter 415, Government Code, is amended by adding Section 415.016 to read as follows:

Sec. 415.016. REMEDIES. (a) The commission may institute an action in its own name to collect on a loan under Subchapter E or to enforce or enjoin the violation of this chapter or any order or rule of the commission. The commission may be represented by the attorney general, by a district or county attorney, or by an assistant attorney general or assistant district or county attorney.

(b) An action brought under this section is in addition to any other action, proceeding, or remedy provided by law and may be brought in any district court of Travis County. A suit brought under this section shall be given preferential setting.

SECTION 5. Chapter 142, Local Government Code, is amended by adding Section 142.010 to read as follows:

Sec. 142.010. EDUCATIONAL LEAVE. (a) In this section:

(1) "Course of study" means enrollment in a college on a full-time basis in pursuit of an educational study plan that is related to law enforcement or public safety.

(2) "Peace officer" means a person employed by a municipality in a position enumerated by Article 2.12, Code of Criminal Procedure.

(b) On written application by a peace officer, a municipality may grant the peace officer a leave of absence to enable the peace officer to engage in a course of study.

(c) A municipality may not adopt a policy that denies employee benefits, including health and life insurance plans, promotional seniority, and accumulation of retirement credit, to a peace officer on leave as provided by Subsection (b) if the peace officer pays both the peace officer's and the municipality's share of the cost of the benefits.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Armbrister moved to concur in the House amendment to **S.B. 269**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Parmer.

SENATE BILL 1095 WITH HOUSE AMENDMENTS

Senator Brooks called **S.B. 1095** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Local and Consent Calendars
Committee Amendment No. 1 - B. Hunter

Amend **S.B. 1095** on page 1 and 2, by deleting Subsection (g).

Local and Consent Calendars Committee Amendment No. 2 - T. Hunter

Amend **S.B. 1095** on page 1, line 16, by striking, "For each biennium," and substituting the following:

(1) Capitalize the word "The" immediately preceding the word "legislature" on line 16.

(2) Add after the period on line 19, the following:

The legislature shall not appropriate any state funds to the fund after the year 1992.

Local and Consent Calendars
Committee Amendment No. 3 - Hury

Amend **S.B. 1095** on page 1, line 20, by striking "(f)" and substituting "(d)"

The amendments were read.

Senator Brooks moved to concur in the House amendments to **S.B. 1095.**

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Parmer.

SENATE BILL 1678 WITH HOUSE AMENDMENTS

Senator Brooks called **S.B. 1678** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment No. 1 - Vowell

Amend **S.B. 1678** by adding the following subsection to SECTION 4.:

(e) Public hospitals including, hospitals owned, operated, or leased by a governmental entity including a municipality, county, hospital district, or this state, and specifically including a state teaching hospital, may transfer funds to the Texas Department of Human Services for use as state share under the Medicaid disproportionate share program.

Committee Amendment No. 2 - Vowell

Amend **S.B. 1678**, Section 3 as follows:

On page 3, line 4, substitute "a new Section 131.0042" for "Chapter 135."
On page 3, delete lines 5 and 6.
On page 3, line 7, substitute "131.0042" for "135.001."

The amendments were read.

Senator Brooks moved to concur in the House amendments to **S.B. 1678.**

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Parmer.

SENATE BILL 1507 WITH HOUSE AMENDMENT

Senator Brooks called **S.B. 1507** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment - Kuempel

Amend **S.B. 1507** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. This Act shall be known as the Fish Farming Act of 1989.

SECTION 2. Except as provided by Section 134.020, Agriculture Code, as added by this Act, regulating exotic fish species, the powers and duties of the Parks and Wildlife Commission and the Parks and Wildlife Department with regard to the regulation of fish farms are transferred, as provided by this Act, to the commissioner of agriculture and the Department of Agriculture on the effective date of this Act.

SECTION 3. Chapter 48, Parks and Wildlife Code, is transferred to Subtitle A, Title 6, Agriculture Code, designated as Chapter 134, and amended to read as follows:

CHAPTER 134 [~~48~~]. REGULATION OF FISH FARMS AND CULTURED FISH-PROCESSING PLANTS [~~FARMER'S LICENSE~~]

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 134.001 [~~48.001~~]. DEFINITIONS. In this chapter:

(1) "Cultured fish" means farm-raised fish or shellfish.

(2) "Exotic fish species" means a nonindigenous fish or shellfish species that is not normally found in the water of the state.

(3) "Fish farmer" means any person engaged in fish farming.

(4) "Fish farming" means the business of producing, propagating, transporting, possessing, and selling cultured fish raised in a private pond, but does not include [~~a person engaged in~~] the business of producing, propagating, transporting, possessing, and selling cultured fish propagated for bait purposes.

(5) [~~(2)~~] "Private pond" means a pond, reservoir, vat, or other structure capable of holding cultured fish in confinement wholly within or on the enclosed land of an owner, [~~or~~] lessor, or lessee.

(6) [~~(3)~~] "Owner" means a fish farmer licensed by the department.

Sec. 134.002. FISH FARM PROGRAM. The department shall establish a fish farm program that:

(1) develops and conducts a plan for promoting fish farm products;

(2) licenses and regulates fish-farming operations;

(3) licenses and regulates cultured fish-processing plants;

(4) provides technical assistance, including demonstrations, to fish farmers;

(5) provides coordinated support through colleges and universities and other governmental entities;

(6) solicits financial support from the federal government for the fish farm industry;

(7) develops and expands the fish farm industry to:

(A) stimulate the state's economy; and

(B) offer alternative crop opportunities; and

(8) performs other functions and activities as required by law.

Sec. 134.003. PROGRAM ADMINISTRATOR; STAFF. (a) The department may designate a person to administer the fish farm program.

(b) The department or the program administrator may employ the necessary staff to carry out the functions and duties of the department under this chapter.

Sec. 134.004. CONTRACTS. The department may contract with the General Land Office, the Parks and Wildlife Department, and the Texas Agricultural Extension Service for assistance in carrying out the purposes of this chapter.

Sec. 134.005. RULES. (a) The department shall adopt rules to carry out the fish farm program.

(b) The rules may not conflict with rules issued under Section 134.020 of this code.

Sec. 134.006. FISH FARM FUND. (a) The fish farm fund is established in the state treasury.

(b) The department shall deposit to the credit of the fund the fees received from licenses issued under this chapter.

(c) The fish farm fund may be used only to administer this chapter.

[Sections 134.007-134.010 reserved for expansion]

SUBCHAPTER B. FISH FARMS

Sec. 134.011 [~~48.002~~]. FISH FARMER'S LICENSE REQUIRED. A [~~No~~] person may not be a fish farmer without first having acquired from the department a fish farmer's license.

Sec. 134.012 [~~48.003~~]. FISH FARM VEHICLE LICENSE REQUIRED. (a) Except as provided by Subsection (b) of this section, a vehicle used to transport fish from a fish farm for sale from the vehicle is required to have a fish farm vehicle license.

(b) A fish farm vehicle license is not required for a vehicle owned and operated by the holder of a fish farmer's license.

Sec. 134.013 [~~48.004~~]. BILL OF LADING REQUIRED FOR CERTAIN VEHICLES. A vehicle, from which no fish sales are made, transporting cultured fish from a fish farm shall carry a bill of lading that shows the number and species of cultured fish carried, the name of the owner and the location and license number of the fish farm from which the fish were transported, and the destination of the cargo.

Sec. 134.014 [~~48.005~~]. LICENSE FEES. The department shall issue a fish farmer's license or a fish farm vehicle license on the payment of a fee, in [~~$10 for each license or~~] an amount set by the commissioner, not to exceed $100 [~~commission, whichever amount is more~~].

Sec. 134.015 [~~48.006~~]. FORM, [~~AND~~] DURATION, AND RENEWAL OF LICENSE. (a) A fish farmer's license and a fish farm vehicle license must be on a numbered form provided by the department.

(b) A license is valid for two years after the date of issuance. The department shall renew a license on submission by the licensee of a completed application and a renewal fee in an amount set by the commissioner under Subsection (c) of this section unless the department determines that the licensee has violated this chapter or a rule adopted under this chapter [~~from September 1 or the date of issue, whichever is later, through the following August 31~~].

(c) The department shall establish by rule a graduated renewal fee schedule designed to recover an amount that, when added to the fees collected under Section 134.014 of this code, is sufficient to administer this subchapter. The fee schedule shall be based on the gross receipts from the sale of cultured fish sold by a licensee during the first 21 months of the period covered by the expiring license. The fee schedule shall require that licensees having a relatively large amount of gross receipts pay the highest fee.

(d) The department shall suspend a license if the aquaculture executive committee makes a determination as provided by Section 1.204, Parks and Wildlife Code.

Sec. 134.016 [~~48.008~~]. RECORDS. The holder of a fish farmer's license shall maintain a record of the sales and shipments of cultured fish. The record is open for inspection by designated employees of the department.

Sec. 134.017 [~~48.009~~]. HARVESTING AND SALE OF FISH. Cultured fish [~~Fish~~] of any size from a fish farm may be harvested and sold at any time and in any county.

Sec. 134.018 [~~48.010~~]. SALES OF BASS AND CRAPPIE LIMITED. (a) Except as provided in Subsection (b) of this section, a [~~no~~] person may not sell bass or crappie from a fish farm for consumption or for resale.

(b) Bass and crappie may be sold for resale to a licensed fish farmer only, and to any person for stocking purposes.

(c) Other kinds of cultured fish from a fish farm may be sold for any purpose unless prohibited by other law.

Sec. 134.019 [~~48.0101~~]. MARKETING OF CULTURED REDFISH AND CULTURED SPECKLED SEA TROUT. (a) The commissioner [~~commission~~] shall adopt rules providing for the raising, sale, transportation, and possession of cultured redfish and cultured speckled sea trout raised by a fish farmer licensed under this chapter.

(b) The rules shall provide for and require the identification of cultured redfish and cultured speckled sea trout raised by a fish farmer under this chapter.

Sec. 134.020. EXOTIC FISH SPECIES. (a) The Parks and Wildlife Commission shall adopt rules regulating the importation, possession, propagation, and sale of harmful or potentially harmful exotic fish species by a fish farmer.

(b) The Parks and Wildlife Commission, after consulting with the commissioner and an individual designated by the chairman of the board of regents of The Texas A&M University System, shall determine and publish a list of harmful or potentially harmful exotic fish species that a fish farmer may not import, possess, or sell as part of the person's fish-farming activities.

(c) A fish farmer may not release in public water harmful or potentially harmful exotic fish species except as provided by Section 66.007, Parks and Wildlife Code.

(d) The Parks and Wildlife Department shall enforce the rules adopted under this section.

Sec. 134.021 [~~48.011~~]. FEDERAL GRANTS. Federal grants for research and development of commercial fisheries may be used for individual fish farm [~~fishery~~] projects [~~with the approval of the department~~].

[~~Sec. 48.012. PENALTIES. (a) Except as provided by Subsection (b) of this section, a person who violates any provision of this chapter or rule adopted under this chapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.~~

[~~(b) A person who violates Section 48.013 of this code by taking fish of a value of more than $200 commits an offense that is a Class B Parks and Wildlife Code misdemeanor.~~]

Sec. 134.022 [~~48.013~~]. FISH FARMS PROTECTED. (a) A [~~No~~] person, other than the owner or operator of a fish farm [~~or a person with the owner's or operator's consent~~], may not fish on [~~or take fish from~~] a fish farm without the consent of the owner or operator.

(b) A person may not unlawfully, as defined by Section 31.03(b), Penal Code, acquire or otherwise exercise control over cultured fish with intent to deprive the owner of the cultured fish.

Sec. 134.023. PENALTIES. (a) Except as provided by Subsection (b), (c), or (d) of this section, a person who violates any provision of this chapter or rule adopted under this chapter commits an offense that is a Class C misdemeanor.

(b) A person who violates Section 134.019 or 134.020 of this code commits an offense that is a Class B misdemeanor.

(c) A person who violates Section 134.022(b) of this code by taking fish of a value of $200 or more but less than $750 commits an offense that is a Class A misdemeanor.

(d) A person who violates Section 134.022(b) of this code by taking fish of a value of $750 or more commits an offense that is a felony of the third degree.

[Sections 134.024-134.030 reserved for expansion]

SUBCHAPTER C. PROCESSING PLANTS

Sec. 134.031. LICENSE REQUIRED. (a) A person may not operate a cultured-fish processing plant unless the person has a license for that plant.

(b) A separate license is required for each plant.

Sec. 134.032. LICENSE ISSUANCE. (a) The department shall issue a license to a person who operates a plant that conforms to the rules adopted under this subchapter.

(b) A license is nontransferable.

(c) A person who operates a cultured-fish processing plant must annually apply for a new license for each plant.

(d) The department may consult with other state agencies on the requirements for a license issued under this section.

Sec. 134.033. LICENSE FEE. The department shall set the fee for a cultured-fish processing plant license in an amount necessary to cover the cost of administering this subchapter.

Sec. 134.034. RULES. The department shall adopt rules for the licensing of a cultured-fish processing plant.

Sec. 134.035. PENALTY. (a) A person commits an offense if the person violates this subchapter or a rule adopted under this subchapter.

(b) An offense under this section is a Class C misdemeanor.

Sec. 134.036. TEXAS DEPARTMENT OF HEALTH REGULATIONS. This subchapter does not affect the authority of the Texas Department of Health to regulate food-processing plants.

SECTION 4. Section 12.009, Agriculture Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) The department shall inquire into subjects relating to stock raising, dairying, and poultry, the obtaining and rearing of the most valuable domestic animals and fowls, and the breeding and improvement of those animals and fowls. The department shall encourage the [~~raising of fish and the~~] culture of bees.

(c) The department shall encourage the raising of cultured fish, the development of the fish-farming industry, and the marketing of fish farm products. In this subsection, "cultured fish" and "fish farming" have the meanings assigned by Section 134.001 of this code.

SECTION 5. Chapter 1, Parks and Wildlife Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. AQUACULTURE EXECUTIVE COMMITTEE AND LIAISON OFFICER

Sec. 1.201. AQUACULTURE EXECUTIVE COMMITTEE. The aquaculture executive committee consists of the chairman, the commissioner of agriculture, and the commissioner of the General Land Office.

Sec. 1.202. DEFINITION. In this subchapter, "fish farming" has the meaning assigned by Section 134.001, Agriculture Code.

Sec. 1.203. RULES. The aquaculture executive committee with the advice of the department shall adopt rules to ensure that fish-farming operations do not have a negative impact on the existing marine or biological ecosystem.

Sec. 1.204. SUSPENSION OF LICENSE. If the aquaculture executive committee determines that a particular fish-farming operation has violated a rule adopted under Section 1.203 of this code, the Department of Agriculture shall suspend the license of that fish-farming operation until the committee issues a notice approving the continuation of the fish-farming operation.

Sec. 1.205. EMPLOYMENT OF OFFICER. (a) The aquaculture executive committee shall employ an aquaculture liaison officer to perform the duties listed in Section 1.206 of this code.

(b) The committee shall set the salary of the officer. The department, the Department of Agriculture, and the General Land Office shall each provide one-third of the salary of the officer.

(c) The officer serves at the pleasure of the committee.

Sec. 1.206. DUTIES OF OFFICER. (a) The aquaculture liaison officer shall:

(1) coordinate activities concerning the aquaculture industry between the state agencies having regulatory authority over that industry;

(2) report to the aquaculture executive committee every six months, or more often in the discretion of the officer, and to the legislature before the beginning of each regular session, concerning the status of the aquaculture industry in the state; and

(3) assist the commission in drafting the rules required to be adopted under Section 134.020(a), Agriculture Code.

(b) A report under Subsection (a)(2) of this section may include recommendations to promote the state's aquaculture industry or to improve the cooperation between the state agencies having regulatory authority over the industry.

SECTION 6. Section 11.032, Parks and Wildlife Code, is amended to read as follows:

Sec. 11.032. GAME, FISH, AND WATER SAFETY FUND: SOURCES. The department shall deposit to the credit of the game, fish, and water safety fund all revenue, less allowable costs, from the following sources:

(1) all types of fishing licenses and stamps and shrimping licenses;

(2) all types of hunting licenses and stamps;

(3) trapping licenses and other licenses relating to the taking, propagation, and sale of fur-bearing animals or their pelts;

(4) sale of marl, sand, gravel, shell, and mudshell;

(5) oyster bed rentals and permits;

(6) federal funds received for research and development of commercial fisheries and state funds appropriated for this purpose;

(7) sale of property, less advertising costs, purchased from this fund or a special fund that is now part of this fund;

(8) fines and penalties collected for violations of a law pertaining to the protection and conservation of wild birds, wild fowl, wild animals, fish, shrimp, oysters, game birds and animals, fur-bearing animals, alligators, and any other wildlife resources of this state;

(9) sale of rough fish by the department;

(10) fees for importation permits;

(11) [~~fish farm licenses;~~

[~~(12)~~] fees from supplying fish for or placing fish in water located on private property;

(12) [~~(13)~~] sale of seized pelts;

(13) [~~(14)~~] sale or lease of grazing rights to and the products from game preserves, sanctuaries, and management areas;

(14) [~~(15)~~] contracts for the removal of fur-bearing animals and reptiles from wildlife management areas;

(15) [~~(16)~~] motorboat registration fees;

(16) [~~(17)~~] motorboat manufacturer or dealer registration fee;

(17) [~~(18)~~] fines or penalties imposed by a court for violation of water safety laws contained in Chapter 31 of this code;

(18) [~~(19)~~] alligator hunter's or alligator buyer's licenses;

(19) [~~(20)~~] sale of alligators or any part of an alligator by the department; and

(20) [~~(21)~~] any other source provided by law.

SECTION 7. Section 12.015, Parks and Wildlife Code, is amended to read as follows:

Sec. 12.015. REGULATION OF FISH, SHELLFISH, AND [~~NOXIOUS~~] AQUATIC PLANTS. The department shall regulate the introduction and stocking of fish, shellfish, and aquatic plants into the public water of the state. [~~(a) In this section, "noxious aquatic plant" means a plant that thrives in water, marshes, or swamps and that:~~

[~~(1) is harmful or potentially harmful to human life;~~

[~~(2) may impede navigation, or~~

[~~(3) may diminish the quality of water-oriented recreational areas.~~

[~~(b) The department shall:~~

[~~(1) identify noxious aquatic plants;~~

[~~(2) publish a list of the names of noxious aquatic plants identified by the department; and~~

[~~(3) make rules and regulations necessary to carry out this section.~~

[~~(c) The department may issue permits for the importation, sale, transport, or release of noxious aquatic plants identified by the department if the department finds that the proposed use of the noxious aquatic plants by the permit applicant will not pose a danger to persons, wildlife resources, or water resources.~~

[~~(d) No person may intentionally or knowingly import or intentionally or knowingly sell, transport, or release in this state a noxious aquatic plant identified by the department unless the person has an unexpired written permit issued by the department authorizing the importation, sale, transportation, or release.~~]

SECTION 8. Section 66.007, Parks and Wildlife Code, is amended to read as follows:

Sec. 66.007. EXOTIC HARMFUL OR POTENTIALLY HARMFUL [~~TROPICAL~~] FISH, SHELLFISH, AND AQUATIC PLANTS. (a) No person may import, possess, sell, or place [~~release~~] into water of this state exotic harmful or potentially harmful [~~tropical~~] fish, shellfish, or aquatic plants except as authorized by rule or permit issued by the department [~~or fish eggs unless he has acquired from the department a written permit~~].

(b) The department shall [~~determine and~~] publish a list of exotic [~~tropical~~] fish, shellfish, and aquatic plants for which a permit under Subsection (a) of this section is required [~~that are harmful or potentially harmful to human or other animal life~~].

(c) The department shall make rules to carry out the provisions of this section.

(d) A fish farmer may import, possess, or sell harmful or potentially harmful exotic fish species as provided by Section 134.020, Agriculture Code.

(e) In this section, exotic fish, shellfish, or aquatic plant means a nonindigenous fish, shellfish, or aquatic plant that is not normally found in the public water of the state.

SECTION 9. Subsections (b), (c), and (d), Section 66.012, Parks and Wildlife Code, are amended to read as follows:

(b) Except as otherwise provided by this section, a [~~A~~] person who violates Section 66.003, 66.004, 66.005, 66.007, 66.009, 66.015, or 66.0091 of this code commits an offense that is a Class B Parks and Wildlife Code misdemeanor.

(c) [~~If it is shown at the trial of the defendant for a violation of Section 66.004 of this code that he has been convicted within five years before the trial date of a violation of that section, on conviction he shall be punished for a Class B Parks and Wildlife Code misdemeanor.~~

[~~(d)~~] If it is shown at the trial of the defendant for a violation of Section 66.004, 66.007, or 66.015 of this code that he has been convicted once before the trial date [~~two or more times~~] of a violation of the same [~~that~~] section [~~and that one conviction occurred within five years before the trial date~~], on conviction he shall be punished for a Class A Parks and Wildlife Code misdemeanor.

(d) If it is shown at the trial of the defendant for a violation of Section 66.004, 66.007, or 66.015 of this code that he has been convicted two or more times before the trial date of a violation of the same section, on conviction he shall be punished for a Parks and Wildlife Code felony.

SECTION 10 Chapter 66, Parks and Wildlife Code, is amended by adding Section 66.013 to read as follows:

Sec. 66.013. FEDERAL GRANTS. Federal grants for research and development of commercial fisheries may be used for individual fishery projects with the approval of the department.

SECTION 11. Chapter 66, Parks and Wildlife Code, is amended by adding Section 66.015 to read as follows:

Sec. 66.015. INTRODUCTION OF FISH, SHELLFISH, AND AQUATIC PLANTS. (a) In this section, "public water" means the bays, estuaries, and water of the Gulf of Mexico within the jurisdiction of the state, and the rivers, streams, creeks, bayous, reservoirs, lakes, and portions of those waters where public access is available without discrimination.

(b) No person may place any species of fish, shellfish, or aquatic plant into the public water of the state without a permit issued by the department.

(c) The department shall establish rules and regulations governing the issuance of permits under this section.

(d) This section does not apply to native, nongame fish as defined by the commission.

(e) A person violates this section if fish, shellfish, or aquatic plants the person possesses or has placed in nonpublic water escape into the public water of the state and the person does not hold a permit issued under this section.

(f) An employee of the department acting at the direction of the commission is exempt from this section.

SECTION 12. (a) This Act takes effect September 1, 1989.

(b) The Department of Agriculture shall implement the fish farm program under Section 134.003, Agriculture Code, as added by this Act, not later than January 1, 1990, and the department shall adopt rules under Chapter 134, Agriculture Code, not later than that date. The department shall publish notice of implementation of the program in the Texas Register not later than the 30th day before the date the department implements the program. The initial rules adopted by the department under Chapter 134, Agriculture Code, as added by this Act, take effect on the date the program is implemented by the department.

(c) Section 134.023, Agriculture Code, as added by this Act, applies to an offense under Chapter 134, Agriculture Code, as added by this Act, that occurs on or after the date the fish farm program is implemented. An offense under Chapter 48, Parks and Wildlife Code, that occurs or occurred before the date the program is implemented is covered by the law as it existed at the time of the offense, including rules in effect at that time, and the former law is continued in effect for that purpose. For purposes of this subsection, an offense is committed before the date the program is implemented if any element of the offense occurs before that date.

(d) The changes in law made by Sections 66.007 and 66.012, Parks and Wildlife Code, as amended by this Act, and Section 66.015, Parks and Wildlife Code, as added by this Act, apply only to offenses committed on or after the effective date of this Act. For purposes of this subsection, an offense is committed before the effective date of this Act if any element of the offense occurs before that date. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

(e) A fish farmer's license or a fish farm vehicle license issued by the Parks and Wildlife Department that is in effect on August 31, 1989, expires on the 31st day after the date the fish farm program is implemented.

(f) A person operating a processing plant that produces cultured fish products must apply for the license required by Section 134.031, Agriculture Code, as added by this Act, not later than the 30th day after the date the fish farm program is implemented.

(g) The rules adopted under Chapter 48, Parks and Wildlife Code, and in effect on the effective date of this Act, remain in effect until the effective date of initial rules adopted by the Department of Agriculture under Chapter 134, Agriculture Code, as added by this Act.

(h) The Parks and Wildlife Commission shall adopt rules under Section 134.020(a), Agriculture Code, as added by this Act, and the chairman of the Parks and Wildlife Commission shall publish the list required by Section 134.020(b), Agriculture Code, as added by this Act, not later than three months after the effective date of this Act. The authority granted under Section 66.007(d), Parks and Wildlife Code, as added by this Act, does not apply until the date that rules adopted under Section 134.020(a), Agriculture Code, as added by this Act, take effect.

SECTION 13. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Brooks and by unanimous consent, the Senate concurred in the House amendment to **S.B. 1507** viva voce vote.

RECORD OF VOTE

Senator Armbrister asked to be recorded as voting "Nay" on the motion to concur in the House amendment.

GUEST PRESENTED

Senator Barrientos was recognized and presented Dr. Mark Dawson of Austin.

The Senate welcomed Dr. Dawson, a participant in the "Capitol Physician" program sponsored by the Texas Academy of Family Physicians, and expressed appreciation for his contributions today.

SENATE BILL 1025 WITH HOUSE AMENDMENT

Senator Brooks called **S.B. 1025** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Floor Amendment - Oakley

Amend **S.B. 1025** by adding a new section, to be numbered appropriately, to read as follows:

SECTION ___. Section R, Article 2.22A, Texas Non-Profit Corporation Act (Article 1396-2.122A, Vernon's Texas Civil Statutes), is amended to read as follows:

R.(1) A corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the corporation or who is or was serving at the request of the corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise against any liability asserted against him and incurred by him in such a capacity or arising out of his status as such a person, whether or not the corporation would have the power to indemnify him against that liability under this article.

(2)(a) In addition to the powers described in Subsection (1), a corporation may purchase, maintain, or enter into other arrangements on behalf of any person who is or was a director, officer, or trustee of the corporation against any liability asserted against him and incurred by him in such capacity or arising out of his status as such a person, whether or not the corporation would have the power to indemnify him against that liability under this article.

(b) If the other arrangement is with a person or entity that is not regularly engaged in the business of providing insurance coverage, the arrangement may provide for payment of a liability with respect to which the corporation would not have the power to indemnify a person only if coverage for that liability has been approved by the corporation's members, if the corporation has members.

(c) Without limiting the power of the corporation to procure or maintain any kind of other arrangement, a corporation, for the benefit of persons described in Subsection (2)(a) may:

(i) create a trust fund;

(ii) establish any form of self-insurance;

(iii) secure its indemnity obligation by grant of a security interest or other lien on the assets of the corporation; or

(iv) establish a letter of credit, guaranty, or surety arrangement.

(d) For the limited purposes of Subsection (2) of this Section only, any liability indemnification arrangement, other than coverage through an insurance carrier, is not considered to be the business of insurance under the Texas Insurance Code, including the Property and Casualty Insurance Guaranty Act (Art. 21.28-C), or any other law of this state.

(3) The insurance may be procured or maintained with an insurer, or the other arrangement may be procured, maintained, or established within the corporation or with any insurer or other person considered appropriate by the board of directors, regardless of whether all or part of the stock or other securities of the insurer or other person are owned in whole or part by the corporation. In the absence of fraud, the judgment of the board of directors as to the terms and conditions of the insurance or other arrangement and the identity of the insurer or other person participating in an arrangement is conclusive, and the insurance or arrangement is not voidable and does not subject the directors approving the insurance or arrangement to liability, on any ground, regardless of whether directors participating in the approval are beneficiaries of the insurance or arrangement.

The amendment was read.

On motion of Senator Brooks and by unanimous consent, the Senate concurred in the House amendment to **S.B. 1025** viva voce vote.

SENATE BILL 487 WITH HOUSE AMENDMENTS

Senator Brooks called **S.B. 487** from the President's table for consideration of the House amendments to the bill.

Senator Brooks moved to concur in the House amendments.

On motion of Senator Brooks and by unanimous consent, the motion to concur in the House amendments was withdrawn.

HOUSE BILL 579 ON THIRD READING

On motion of Senator Ratliff and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its third reading and final passage:

H.B. 579, Relating to the creation of the offense of injury to or interference with an animal under the supervision of a peace officer or a department of corrections employee.

The bill was read third time.

Senator Ratliff offered the following amendment to the bill:

Amend **H.B. 579** on line 30, Senate Committee Printing, by inserting between "person" and ":" the following:

knowingly, intentionally, or recklessly

By unanimous consent, the amendment was read and was adopted viva voce vote.

On motion of Senator Ratliff and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was finally passed viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 2494 ON THIRD READING

On motion of Senator Brooks and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its third reading and final passage:

C.S.H.B. 2494, Relating to certain solid waste permit applications, to certain peace officers and their enforcement of and training concerning litter and solid waste disposal regulations, and to establishing a hotline for enforcement purposes.

The bill was read third time.

Senator Barrientos offered the following amendment to the bill:

Amend **C.S.H.B. 2494** as follows:

1) on page 1, line 60 after the word "requires", add:

The department must give public notice of an opportunity for a hearing on an application for a landfill permit at least once each week for two consecutive weeks beginning no later than the 14th day from the last day allowed to request such a hearing. The notice must be published in the newspaper having the largest general circulation that is published in the county in which the proposed landfill will be located, unless no newspaper is published in the county, in which case the notice must be published in a newspaper of general circulation in the county.

2) on page 2, line 7 delete the word "one-half" and substitute in lieu thereof "one"

By unanimous consent, the amendment was read and was adopted viva voce vote.

On motion of Senator Brooks and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was finally passed viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 524 ON SECOND READING

On motion of Senator McFarland and by unanimous consent, the regular order of business and Senate Rule 5.14 were suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 524, Relating to punishment for the offense of theft if the property stolen is a firearm.

The bill was read second time and was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 524 ON THIRD READING

Senator McFarland moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 524** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Parmer.

The bill was read third time and was passed viva voce vote.

HOUSE BILL 183 ON SECOND READING

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 183, Relating to the regulation of underground storage tank installers; providing penalties.

The bill was read second time.

Senator Armbrister offered the following committee amendment to the bill:

Amend **H.B. 183** as follows:

(1) SECTION 1. DEFINITIONS. page 2, Add the following:

(15) "Critical Junctures" means, in the case of an installation, repair or removal, all of the following steps:

(A) preparation of the tank bedding immediately prior to receiving the tank;

(B) setting of the tank and the piping, including placement of any anchoring devices, backfill to the level of the tank, and strapping, if any:

(C) connection of piping systems to the tank;

(D) all pressure testing of the underground storage tank including associated piping, performed during the installation; and

(E) completion of backfill and filling of the excavation;

(F) any time during the repair in which the piping system is connected or reconnected to the tank; and

(G) any time during the repair in which the tank or its associated piping is tested;

(H) any time during the removal of the tank.

(2) Strike subsection 11(B) of SECTION 1, lines 21 through 24, page 2, and insert in lieu thereof the following:

(B) an individual with at least two years of active experience in the vocation of installation of underground storage tanks, underground utilities, or other engineering construction in the State of Texas, and who meets the licensing requirements under Section 6 of this Act.

(3) Strike subsection (a), SECTION 3, line 12, page 4, and insert in lieu thereof the following:

(a) site at all times during the critical junctures of the installation, repair or removal.

(4) Strike subdivision (2), Section 6(a), lines 21 through 23, page 5, and insert in lieu thereof the following:

(2) meets the application requirements prescribed by commission rule, including experience in installation of underground storage tanks, underground utilities, or other engineering construction in the State of Texas, not to exceed two years of active experience.

(5) Strike subdivision (f), Section 10, lines 13 through 16, page 8, and insert in lieu thereof the following:

(f) One member must be a person who is not eligible for a license under this Act, but who has demonstrated experience in environmental protection, fire protection, or the operation and maintenance of underground storage tanks.

(6) Strike subdivision (g), Section 10, lines 17 through 18, page 8, and insert in lieu thereof the following:

(g) Three members must be persons who own construction firms engaged in engineering construction in the State of Texas.

The committee amendment was read and was adopted viva voce vote.

Senator Armbrister offered the following amendment to the bill:

Amend **H.B. 183** as follows:

(1) On page 2, line 46, after "engineer", insert "registered to practice in this state".

(2) On page 2, beginning on line 67, strike "The application fee for the certificate of registration must be in the amount not to exceed $100, and the fee for issuance of either the initial or the renewal certificate of registration must be in an amount not to exceed $500.".

(3) On page 3, strike lines 10 through 13, Subsection (c) of Section 2, and renumber Subsections (d), (e), and (f) accordingly.

(4) On page 3, renumber Subsection (b) of Section 3 as Subsection (c), and add a new Subsection (b), to read as follows:

(b) A license issued under this Act is not transferable.

(5) On page 4, line 4, strike "in" and substitute "and".

(6) On page 4, lines 15 and 16, strike ", along with any civil penalties levied under this Act,".

(7) On page 4, add Subsections (a)(6), (a)(8), (a)(9), and (a)(10) to Section 8, to read as follows:

(6) certification of registration application fee ..... $50.

(7) certification of registration
issuance fee ..... $100.
(8) certification of registration
annual renewal fee ..... $75.
(9) duplicate certification
of registration or license ..... $10.
(10) application to change certificate
of registration ..... $70.

The amendment was read and was adopted viva voce vote.

On motion of Senator Armbrister and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 183 ON THIRD READING

Senator Armbrister moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 183** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Parmer.

The bill was read third time and was passed viva voce vote.

SENATE CONCURRENT RESOLUTION 180

Senator Brown offered the following resolution:

S.C.R. 180, Resolving to suspend rules to allow conferees to go outside House's version of **S.B. 55** and to suspend printing and notice rules for the Conference Committee Report.

The resolution was read.

On motion of Senator Brown and by unanimous consent, the resolution was considered immediately and was adopted viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 377 ON SECOND READING

On motion of Senator Edwards and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 377, Relating to the punishment of the offense of possession of child pornography.

The bill was read second time and was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 377 ON THIRD READING

Senator Edwards moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 377** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Parmer.

The bill was read third time and was passed viva voce vote.

HOUSE BILL 1263 ON SECOND READING

On motion of Senator Caperton and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1263, Relating to the administration and financing of mass transportation.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 1263 ON THIRD READING

Senator Caperton moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 1263** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Parmer.

The bill was read third time and was passed viva voce vote.

HOUSE BILL 24 ON SECOND READING

Senator Lyon moved to suspend the regular order of business to take up for consideration at this time:

H.B. 24, Relating to taxes on the purchase, acquisition, importation, manufacture, or production of a controlled substance, counterfeit substance, simulated controlled substance, or marihuana; providing criminal penalties and providing for the seizure and forfeiture of certain property.

The motion prevailed by the following vote: Yeas 25, Nays 1.

Nays: Glasgow.

Absent: Brown, Harris, Parker, Washington.

Absent-excused: Parmer.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 24 ON THIRD READING

Senator Lyon moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 24** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 2.

Yeas: Armbrister, Barrientos, Bivins, Brooks, Brown, Caperton, Carriker, Dickson, Edwards, Green, Haley, Harris, Henderson, Johnson, Krier, Leedom, Lyon, McFarland, Montford, Parker, Ratliff, Santiesteban, Sims, Tejeda, Truan, Uribe, Whitmire, Zaffirini.

Nays: Glasgow, Washington.

Absent-excused: Parmer.

The bill was read third time and was passed viva voce vote.

RECORD OF VOTE

Senator Glasgow asked to be recorded as voting "Nay" on the final passage of the bill.

CONFERENCE COMMITTEE REPORT
HOUSE BILL 526

Senator Carriker submitted the following Conference Committee Report:

Austin, Texas
May 27, 1989

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 526** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

CARRIKER	JUNELL
McFARLAND	OVARD
BROWN	PARKER
SIMS	RICHARDSON
	ALEXANDER
On the part of the Senate	On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

HOUSE BILL 1935 ON SECOND READING

On motion of Senator Montford and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1935, Relating to the issuance of a commercial driver's license and certain information required to be provided by the Department of Public Safety; providing penalties.

The bill was read second time.

Senator Montford offered the following amendment to the bill:

Amend **H.B. 1935** by deleting, on page 16, subsection (d) of SECTION 11.

The amendment was read and was adopted viva voce vote.

On motion of Senator Montford and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 1935 ON THIRD READING

Senator Montford moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 1935** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Parmer.

The bill was read third time and was passed viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 731 ON SECOND READING

On motion of Senator Lyon and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 731, Relating to the creation of the offense of taking or attempting to take a weapon from a peace officer.

The bill was read second time.

Senator Lyon offered the following amendment to the bill:

Amend **C.S.H.B. 731** as follows:

In Section 1 (b), delete the words "who has identified himself as a peace officer,".

Delete subsection (c) in its entirety and replace it with a new subsection (c) as follows:

(c) The actor is presumed to have known that the peace officer was a peace officer if the officer was wearing a distinctive uniform or badge indicating his employment, or if the officer identified himself as a peace officer.

Renumber the current subsections "(c)" and "(d)" to read as "(d)" and "(e)".

The amendment was read and was adopted viva voce vote.

On motion of Senator Lyon and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 731 ON THIRD READING

Senator Lyon moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 731** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Parmer.

The bill was read third time and was passed viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 2435 ON SECOND READING

On motion of Senator Carriker and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 2435, Relating to the criteria used by the Texas Department on Aging to provide funds to area agencies on aging.

The bill was read second time and was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 2435 ON THIRD READING

Senator Carriker moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 2435** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 2.

Yeas: Armbrister, Barrientos, Bivins, Brooks, Brown, Caperton, Carriker, Dickson, Edwards, Glasgow, Green, Haley, Harris, Henderson, Johnson, Krier, Leedom, Lyon, McFarland, Montford, Parker, Santiesteban, Sims, Tejeda, Truan, Uribe, Whitmire, Zaffirini.

Nays: Ratliff, Washington.

Absent-excused: Parmer.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 1.

Nays: Ratliff.

Absent-excused: Parmer.

HOUSE BILL 1671 ON SECOND READING

On motion of Senator Glasgow and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1671, Relating to the appointment of a county purchasing agent in certain counties.

The bill was read second time.

Senator Dickson offered the following amendment to the bill:

Amend **H.B. 1671** to add the following as Section 4 and renumber the subsequent sections accordingly:

SECTION 4. Section 262.023, Local Government Code, is amended to add Subsection (d) as follows:

In counties with under 20,000 population, Subsection (a) of this section shall not apply to contracts that will require an expenditure of less than $15,000.

The amendment was read and was adopted viva voce vote.

On motion of Senator Glasgow and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 1671 ON THIRD READING

Senator Glasgow moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 1671** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Parmer.

The bill was read third time was passed viva voce vote.

SENATE BILL 1205 WITH HOUSE AMENDMENTS

Senator Uribe called **S.B. 1205** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment - Connelly

Amend **S.B. 1205** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Section 3(a), Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) In this Act:

(1) "Administrative authority" means a board, commission, or committee appointed by a governing body to administer this Act in a local enterprise zone.

(2) "Department" [~~"Commission"~~] means the Texas Department of Commerce.

(3) "Depressed area" means an area within the jurisdiction of a county or municipality designated by ordinance or resolution and that meets the criteria set by this Act.

(4) "Economically disadvantaged individual" means an individual who for at least six months [~~the entire year~~] before obtaining employment with a qualified business was unemployed or received public assistance benefits, such as welfare payments and food stamp payments, based on need and intended to alleviate poverty or an economically disadvantaged individual, as defined by Section 4(8), Job Training Partnership Act (29 U.S.C. Section 1503(8)). For purposes of this subdivision, an individual is unemployed if the individual is not employed and has exhausted all unemployment benefits, whether or not the individual is actively seeking employment.

(5) "Enterprise project" means a qualified business designated by the department [~~commission~~] as an enterprise project under Section 10 of this Act that is eligible for the state tax incentives provided by law for an enterprise project.

(6) "Enterprise zone" means an area of the state designated by the department [~~commission~~] as an enterprise zone under Section 9 of this Act.

(7) "Governing body" with respect to an enterprise zone means the governing body of a municipality or county that has applied to have an area within its jurisdiction designated as an enterprise zone.

(8) "Neighborhood enterprise association" means a private sector neighborhood organization within an enterprise zone that meets the criteria set by this Act.

(9) "New job" means a new employment position created by a qualified business that has provided employment to a qualified employee of at least 1,040 hours annually.

(10) "Qualified business" means a person, including a corporation or other entity, that the department [~~commission~~] certifies to have met the following criteria:

(A) the person is engaged in or has provided substantial commitment to initiate the active conduct of a trade or business in the zone;

(B) at least 25 percent of the business's employees in the zone are residents of any zone within the governing body's or bodies' jurisdiction [~~the zone~~] or economically disadvantaged individuals; and

(C) if a business that is already active within the enterprise zone at the time it is designated and that operates continuously after that time, the business has hired residents of any zone within the governing body's or bodies' jurisdiction [~~the zone~~] or economically disadvantaged workers after the designation so that those individuals constitute at least 25 percent of the business's new or additional employees in the zone.

(11) [~~(10)~~] "Qualified employee" means an employee who works for a qualified business and who performs at least 50 percent of his service for the business within the enterprise zone.

(12) [~~(11)~~] "Qualified property" means:

(A) tangible personal property located in the zone that was acquired by a taxpayer after designation of the area as an enterprise zone and was used predominantly by the taxpayer in the active conduct of a trade or business;

(B) real property located in a zone that:

(i) was acquired by the taxpayer after designation of the zone and used predominantly by the taxpayer in the active conduct of a trade or business; or

(ii) was the principal residence of the taxpayer on the date of the sale or exchange; or

(C) interest in a corporation, partnership, or other entity if, for the most recent taxable year of the entity ending before the date of sale or exchange, the entity was a qualified business.

SECTION 2. Section 4, Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4. CRITERIA FOR DESIGNATION OF ENTERPRISE ZONE. (a) An area of a municipality, county, or combination of these local governments may be designated as an enterprise zone if it:

(1) has a continuous boundary;

(2) is at least one square mile in size but does not exceed the larger of the following:

(A) 10 square miles (exclusive of lakes and waterways); or

(B) five percent of the area of the municipality, county, or combination of municipalities or counties nominating [~~designating~~] the area as an enterprise zone, but not more than 20 square miles (exclusive of lakes and waterways);

(3) has been nominated as an enterprise zone in a resolution adopted by the legislative body of the applicable municipality, county, or combination of municipalities or counties; and

(4) is an area with pervasive poverty, unemployment, and economic distress.

(b) An area is an area of pervasive poverty, unemployment, and economic distress if the average rate of unemployment in the area during the most recent 12-month period for which data is available was at least one and one-half times the local, state, or national average for that period or if the area has had at least a nine percent population loss during the most recent six-year period or an annualized

population loss of at least 1-1/2 percent for the most recent six-year period and the area meets one or more of the following criteria:

(1) the area was a low-income poverty area according to the most recent federal census;

(2) the area is in a jurisdiction or pocket of poverty eligible for urban development action grants under federal law;

(3) at least 70 percent of the residents of the area have an income below 80 percent of the median income of the residents of the locality or state, whichever is lower; or

(4) the nominating government establishes to the satisfaction of the department [~~commission~~] that either:

(A) chronic abandonment or demolition of commercial or residential structures exists in the area; or

(B) substantial tax arrearages for commercial or residential structures exist in the area.

(c) An area may be designated as an enterprise zone for a maximum period of seven years. A designation remains in effect until September 1 of the final year of the designation. However, if an area is designated as a federal enterprise zone, the area may be designated for a longer period not to exceed that permitted by federal law.

(d) If an enterprise zone has been lawfully designated, the original nominating governing body or bodies, by resolution adopted following public hearing, may amend the original boundaries subject to the following limitations:

(1) the boundaries as amended must not exceed the original size limitations and boundary requirements set by this Act and may not exclude any part of the zone within the boundaries as originally designated;

(2) the enterprise zone must continue to meet all unemployment and economic distress criteria throughout the zone as required by this Act; and

(3) the governing body or bodies may not make more than one boundary amendment annually during the life of the zone.

(e) The department [~~commission~~] may remove the designation of any area as an enterprise zone if the area no longer meets the criteria for designation as set out in this Act or by rule adopted under this Act by the department [~~commission~~] or if the department [~~commission~~] determines that the governing body has not complied with commitments made in the resolution nominating the area as a reinvestment zone. The removal of a designation does not affect the validity of any tax incentives or regulatory relief granted or accrued before the removal or of any bonds issued under this Act.

SECTION 3. Section 5(a), Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The governing body of any municipality, county, or combination of these local governments may nominate by resolution any economically distressed area within its jurisdiction as a potential enterprise zone, if the area meets the criteria established in Section 4 of this Act. The municipality, county, or combination of these local governments may then make written application to the department [~~commission~~] to have the area certified as an enterprise zone.

SECTION 4. Section 6(a), Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A resolution nominating an area as an enterprise zone must set forth:

(1) a precise description of the area comprising the zone, either in the form of a legal description or by reference to roadways, lakes and waterways, and municipal or county boundaries;

(2) a finding that the zone area meets the qualifications of this Act;

(3) provisions for any tax incentives applicable to business enterprises in the zone at the election of the designating municipality or county not applicable throughout the municipality or county; and

(4) a designation of the area as an enterprise zone, subject to the approval of the department [~~commission~~] in accordance with this Act.

SECTION 5. Section 7, Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7. APPLICATION FOR DESIGNATION OF ZONE. (a) The governing body of a municipality or county or the governing bodies of a combination of municipalities or counties nominating an area as an enterprise zone may make a written application to the department [~~commission~~] to designate the area as an enterprise zone.

(b) The application must include:

(1) a certified copy of the resolution nominating the proposed zone;

(2) a map of the proposed enterprise zone showing existing streets and highways;

(3) an analysis and any appropriate supporting documents and statistics demonstrating that the proposed zone area qualifies for designation as an enterprise zone;

(4) a statement detailing any tax, grant, and other financial incentives or benefits and any programs to be provided by the municipality or county to business enterprises in the zone, other than those provided in the designating ordinance, that are not to be provided throughout the municipality or county;

(5) a statement setting forth the economic development and planning objectives for the zone;

(6) a statement describing the functions, programs, and services to be performed by designated neighborhood enterprise associations in the zone;

(7) an estimate of the economic impact of the zone, considering all of the tax incentives, financial benefits, and programs contemplated, on the revenues of the municipality or county;

(8) a transcript or tape recording of all public hearings on the zone;

(9) in the case of a joint application, [~~a statement detailing the need for a zone covering portions of more than one municipality or county and~~] a description and copy of the agreement between joint applicants;

(10) procedures for negotiating with communities impacted by the zone and with qualified businesses in the zone;

(11) a description of the administrative authority, if any, created for the zone; and

(12) the additional information that the department [~~commission~~] requires.

(c) Information required by Subsection (b) of this section to be provided in an application under this section is for evaluation purposes only. The department [~~commission~~] may reject an application only if the department [~~commission~~] determines that the nominated area does not satisfy the criteria established by Section 4 of this Act.

SECTION 6. Section 8, Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 8. POWERS AND DUTIES OF THE DEPARTMENT [~~COMMISSION~~]. (a) The department [~~commission~~] shall administer this Act and shall:

(1) establish criteria and procedures for designating qualified areas as enterprise zones and for designating enterprise projects;

(2) monitor the implementation of this Act and submit an annual report [~~reports~~] evaluating the effectiveness of the program and describing the use

and revenue impact of state and local incentives under this Act and making suggestions for legislation to the governor and the legislature by December [~~October~~] 1 of each year [~~preceding a regular session of the legislature~~];

(3) conduct a continuing evaluation of the programs of enterprise zones and develop data based on any available information demonstrating the relationship between the incentives provided by this Act and the economy;

(4) adopt all rules necessary to carry out the purposes of this Act;

(5) assist units of local government in obtaining status as a federal enterprise zone;

(6) assist qualified employers in obtaining the benefits of any incentive or inducement program provided by law [~~and certify qualified employers to be eligible for the benefits of this Act~~]; and

(7) assist the governing body of an enterprise zone in obtaining assistance from any other agency of state government, including assistance in providing training and technical assistance to qualified businesses in a zone[;

[~~(8) review all state agency regulations and recommend to the appropriate state agencies the exemptions from regulations adopted by the agencies to contribute to the implementation of this Act; and~~

[~~(9) designate and certify private sector neighborhood enterprise associations within a zone as defined in this Act~~].

(b) The department [~~commission~~] shall provide information and appropriate assistance to persons desiring to locate and engage in business in an enterprise zone regarding state licenses, permits, certificates, approvals, registrations, and charters, along with [~~and any~~] other forms of permission required by law to engage in business in the state.

(c) [~~*The commission shall provide information and appropriate assistance to persons desiring to locate and engage in business in an enterprise zone, to persons engaged in business in an enterprise zone, and to neighborhood enterprise organizations operating in an enterprise zone.*~~

[~~(d)~~] The department [~~commission~~] shall, in cooperation with appropriate units of local government and state agencies, coordinate and streamline existing state business assistance programs and permit and license application procedures for businesses in enterprise zones.

(d) [~~(e)~~] The department [~~commission~~] shall publicize existing tax incentives and economic development programs within enterprise zones and on request offer technical assistance in abatement and alternative revenue source development to local units of government that have enterprise zones within their jurisdictions.

(e) [~~(f)~~] The department [~~commission~~] shall work together with the responsible state and federal agencies to promote the coordination of other relevant programs, including but not limited to housing, community and economic development, small business, banking, financial assistance, and employment training programs that are carried on in an enterprise zone.

(f) [~~(g)~~] The department [~~commission~~] shall assist the governing body of an enterprise zone in the development of small business incubators.

(g) [~~(h)~~] The department [~~commission~~] shall review local incentives every two years.

(h) [~~(i)~~] The department [~~commission~~] shall prohibit the certification of any future qualified businesses in an enterprise zone if it determines the governing body is not in compliance with any provision of this Act until it determines that the governing body is in compliance.

SECTION 7. Section 9, Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9. DESIGNATION OF ZONES BY DEPARTMENT [~~COMMISSION~~]. (a) On receipt of an application from a municipality, county, or

combination of these local governments, the department [~~commission~~] shall review the application to determine if the area described in the application qualifies to be designated as an enterprise zone under the criteria of Section 4 of this Act. The department [~~commission~~] shall provide an applicant at least two weeks after the date of receipt of the application to correct any omissions or clerical errors that may be present in the application and to return [~~resubmit~~] the application to the department [~~commission~~]. Following the close of the application period and the resubmission period, if any, the department [~~commission~~] shall meet to review the applications that have qualified for consideration as enterprise zones.

(b) Not later than the 60th day after the last day of each fiscal year, the comptroller shall furnish to the department a report stating the statewide total of the tax refunds made under Section 17 of this Act during the fiscal year [~~the qualified applications have been selected, the commission shall request from the Comptroller a fiscal impact statement containing an estimate of revenue effects of the proposed nomination on the State of Texas and all affected political subdivisions~~].

(c) If the department [~~commission~~] determines that the nominated area satisfies the criteria established by Section 4 of this Act, the department [~~commission~~] shall begin negotiations for agreements with the governing body or bodies filing the application. A negotiated agreement must designate the enterprise zone. A negotiated agreement must designate the administrative authority, if any, and its functions and duties. The department [~~commission~~] shall complete the negotiations and sign the agreements not later than the 60th [~~120th~~] day after the day of receipt of the application. The department [~~commission~~] may extend this deadline for an additional 30 days. If an agreement is not completed within the stated period, the department [~~commission~~] shall provide the applicant with the specific areas of concern and a final proposal for the agreement. If the agreement is not executed [~~signed~~] before the 90th [~~30th~~] day after the day of the receipt of the application by the department [~~applicant of the final proposal~~], the application is considered to be denied. The department [~~commission~~] shall inform the governing body or bodies of the specific reasons for the denial.

(d) The department [~~commission~~] may not designate an area as an enterprise zone if in the jurisdiction of the municipality or county nominating the area as an enterprise zone there are three enterprise zones in existence that were nominated as enterprise zones by the governing body of that municipality or county.

SECTION 8. Sections 10(a), (b), (c), (d), (f), and (g), Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) A qualified business in an enterprise zone having an unemployment rate of not less than one and one-half times the state average, a population loss of at least 12 percent during the most recent six-year period, or an annualized population loss of at least two percent for the most recent six-year period may apply to the governing body or combination of governing bodies that nominated the enterprise zone and to the administrative authority, if any, for designation as an enterprise project. If the governing body or bodies and administrative authority agree, the governing body or bodies may apply to the department [~~commission~~] to designate the business as an enterprise project.

(b) The application to the department [~~commission~~] must include:

(1) a complete description of the conditions in the zone that constitute pervasive poverty, unemployment, and economic distress for purposes of Subsection (b) of Section 4 of this Act;

(2) a description of each municipality's or county's procedures and efforts to facilitate and encourage participation by and negotiation between all affected entities in the zone in which the qualified business is located;

(3) an economic analysis of the plans of the qualified business for expansion, revitalization, or other activity in the zone, including the anticipated number of new jobs it will create, the amount of investment to be made in the zone, and other information that the department [~~commission~~] requires; and

(4) [~~an analysis of the social impact that the designation of the qualified business as an enterprise project would have on the zone; and~~

[~~(5)~~] a description of the local effort made by the municipality or county, the administrative authority, the qualified business, and other affected entities to achieve development and revitalization of the zone.

(c) The department [~~commission~~] may not designate a nominated qualified business as an enterprise project unless it determines that:

(1) the qualified business is located in an enterprise zone having an unemployment rate of not less than one and one-half times the state unemployment rate, or a population loss of at least 12 percent during the most recent six-year period, or an annualized population loss of at least two percent for the most recent six-year period;

(2) the applicant governing body or bodies have demonstrated that a high level of cooperation between public, private, and neighborhood entities exists in the zone; and

(3) the designation of the qualified business as an enterprise project will contribute significantly to the achievement of the plans of the applicant governing body or bodies for development and revitalization of the zone.

(d) The department [~~commission~~] shall designate qualified businesses as enterprise projects on a competitive basis. In designating enterprise projects, the department [~~commission~~] shall base its decision on a weighted scale with 60 percent dependent on the economic distress of the enterprise zone in which a proposed enterprise project is located and 40 percent dependent on the local effort to achieve development and revitalization of the enterprise zone.

(f) The department [~~commission~~] may designate the following number of enterprise projects in this state:

(1) 10 enterprise projects in the state fiscal year ending August 31, 1988;

(2) 15 enterprise projects in the state fiscal year ending August 31, 1989;

(3) 25 enterprise projects in the state fiscal year ending August 31, 1990; and

(4) 25 enterprise projects in the state fiscal year ending August 31, 1991.

(g) The department [~~commission~~] may remove the designation of a qualified business as an enterprise project if it determines that the qualified business is not in compliance with any requirement for designation as an enterprise project.

SECTION 9. Section 10, Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes), is amended by adding Subsection (k) to read as follows:

(k) The number of enterprise projects that have not been designated before the end of each state fiscal year may be designated in subsequent fiscal years, except that an enterprise project may not be designated after August 31, 1991.

SECTION 10. Section 11, Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11. REINVESTMENT ZONE. An enterprise zone is [~~may be designated~~] a reinvestment zone for tax increment financing or tax abatement purposes as provided by the Tax Increment Financing Act (Chapter 311, Tax Code) or the Property Redevelopment and Tax Abatement Act (Chapter 312, Tax Code).

SECTION 11. Section 12, Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes), as amended by **S.B No. 221**, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

Sec. 12. REFUND OF SALES AND USE TAX. (a) To encourage the development of areas designated as enterprise zones, a municipality may refund local sales and use taxes as provided by Section 321.508, Tax Code.

(b) To promote the public health, safety, or welfare, the governing body of a municipality or county may establish a program by which it refunds local sales and use taxes that it imposes on a qualified business or qualified employee.

(c) The governing body of a municipality or county that nominated an enterprise zone designated by the department may provide for the partial or total refund of local sales and use taxes by persons making a taxable purchase, lease, or rental for purposes of development or revitalization in the zone.°°

(d) A qualified business, qualified employee, or person entitled to a refund of local sales and use taxes under this section shall pay the entire amount of state and local sales and use taxes at the time they would otherwise be due without reduction because of any agreement with a municipality or county for the refund of local sales and use taxes.

(e) Any agreement to refund local sales and use taxes under this section must be in writing, contain an expiration date, and require the beneficiary to provide documentation necessary to support a refund claim to the municipality or county granting the refund. The municipality or county granting a refund shall make the refund directly to the beneficiary in the manner set out in the agreement.

SECTION 12. Section 13, Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 13. REDUCTION OR ELIMINATION OF FEES AND TAXES. To promote the public health, safety, or welfare, the governing body of a municipality or county may establish a program by which it reduces or eliminates any fees or taxes, other than sales and use or property taxes, that it imposes on a qualified business or qualified employee. The governing body of a municipality or county may not reduce or eliminate local sales and use taxes except to the extent it grants a refund under Section 12 of this Act.

SECTION 13. Section 14, Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 14. OTHER LOCAL INCENTIVES. [~~(a)~~] The governing body of a municipality or county that nominated an enterprise zone designated by the department [~~commission~~] may:

(1) defer compliance in the zone with subdivision and development ordinances and regulations, other than those governing streets and roads or sewer or water services;

(2) give priority to the zone for the receipt of urban development action grant money, community development block grant money, industrial revenue bonds, or funds received under the Texas Job-Training Partnership Act (Article 4413(52), Vernon's Texas Civil Statutes);

(3) adopt and implement a plan for police protection in the zone;

(4) amend zoning ordinances to promote economic development in the zone;

(5) establish preferences for businesses in the zone in permit processes;

(6) establish simplified, accelerated, or other special permit procedures for businesses in the zone;

(7) waive development fees for projects in the zone;

(8) [~~provide for the partial or deferred payment of local sales and use taxes as provided by Subsection (b) of this section by persons making a taxable purchase, lease, or rental for purposes of development or revitalization in the zone;~~

[~~(9)~~] create a local enterprise zone fund for funding bonds or other programs or activities to develop or revitalize the zone;

(9) [~~(10)~~] reduce utility rates for qualified businesses in the zone charged by:

(A) utilities owned by the municipality or county [~~for persons in the zone~~]; or

(B) subject to agreement of the affected utility and the approval of the appropriate regulatory authority under Sections 16 and 17, Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes), by a cooperative or a utility owned by private investors except that rates of the utility for qualified businesses in the zone may not be reduced more than five percent and the appropriate regulatory authority in setting the rates of the utility shall allow the utility to recover the amount of the reduction;

(10) [~~(11)~~] give priority to persons or projects in the zone in issuing housing finance bonds; or

(11) [~~(12)~~] give priority in providing services to local economic development, educational, job training, or transportation programs that benefit the zone.

[~~(b) The comptroller shall provide procedures for a person authorized to make a partial or deferred payment of local sales and use taxes under this section to give an exemption certificate to the seller of the property eligible for the partial or deferred tax payment and pay the taxes directly to the comptroller in the amount and at the times provided by the governing body granting the partial or deferred tax payment. The comptroller by rule may provide the additional procedures necessary to administer the partial or deferred tax payments authorized by this section.~~]

SECTION 14. Sections 15(c) and (e), Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes), are amended to read as follows:

(c) Within an enterprise zone designated by the department [~~commission~~], a local government may suspend local ordinances, rules, regulations, or standards relating to zoning, licensing, or building codes unless the ordinance, rule, regulation, or standard relates to one of the proscribed topics in Subsection (a) of this section.

(e) Each state agency rule adopted after September 1, 1987, when applicable, may provide encouragements and incentives to increase rehabilitation, renovation, restoration, improvement, or new construction of housing and to increase the economic viability and profitability of business and commerce in enterprise zones. In addition, each state agency annually shall [~~may~~] review the rules it administers that may negatively impact the rehabilitation, renovation, restoration, improvement, or new construction of housing or the economic viability and profitability of business and commerce in enterprise zones, or that may otherwise affect the implementation of this Act. An agency may take the necessary steps to waive, modify, create exemptions to, or otherwise minimize the adverse effects of those rules on the rehabilitation, renovation, restoration, improvement, or new construction of housing or the economic viability and profitability of business and commerce located in enterprise zones and contribute to the implementation of this Act.

SECTION 15. Section 17, Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 17. [~~STATE SALES AND USE~~] TAX REFUNDS. An enterprise project is entitled to refunds [~~a refund~~] of certain state [~~sales and use~~] taxes as provided by Section 151.429, Tax Code, and the deduction provided by Section 171.1015, Tax Code. A qualified business is entitled to refunds of certain state taxes under Sections 151.431 and 171.501, Tax Code.

SECTION 16. Section 18(d), Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) The department [commission] may give preferences to enterprise zones in the granting of any economic development money or other benefit.

SECTION 17. Sections 21(d), (g), (h), (k), (l), and (m), Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes), are amended to read as follows:

(d) The incorporators shall publish in a newspaper of general circulation in the municipality or county [send to all registered voters of the association's neighborhood area by the same means as for the service of process:

[(1)] an explanation of the proposed new association and their rights in it. A[; and

[(2) a] copy of the association's articles of incorporation and bylaws shall be made available for public inspection at the office of the city manager or comparable municipal officer or at the county judge's office, as applicable.

(g) The governing body may not grant its approval unless the association has hired or appointed a suitable chief executive officer.

[(h) After granting its certification, the governing body shall forward the application to the commission for the commission's final certification. The commission may not grant its certification unless the commission determines that the association has complied with all requirements of this section. On granting certification, the commission shall place the association's articles of incorporation and bylaws in a public file. The commission may suspend the association's certification or any of the leases issued under Subsection (p) of this section if the association fails to continue to comply with the requirements of this section. The commission shall give technical assistance to enterprise zone residents attempting to start such an association.]

(k) The association may carry out other projects or types of projects as approved by the governing body [and the commission. The commission shall adopt rules regarding the projects. The rules may include types of activities that will be given automatic approval by the commission]. In other cases, an application must be submitted by the association to the governing body [and the commission] that describes the nature and benefit of the project, specifically:

(1) how it will contribute to the self-help efforts of the residents of the area involved;

(2) how it will involve the residents of the area in project planning and implementation;

(3) whether there are sufficient resources to complete the project and whether the association will be fiscally responsible for the project; and

(4) how it will enhance the enterprise zone in one of the following ways:

(A) by creating permanent jobs;

(B) by physically improving the housing stock;

(C) by stimulating neighborhood business activity; or

(D) by preventing crime.

(l) If the governing body does [and the commission do] not specifically disapprove of the project before the 45th day after the day of the receipt of the application, it shall be considered approved. If the governing body [or the commission] disapproves of the application, it shall specify its reasons for this decision and allow 60 days for the applicant to make amendments. [The commission shall provide assistance upon request to applicants of such process.]

(m) The neighborhood enterprise association shall furnish an annual statement to the governing body [and the commission] on the programmatic and financial status of any approved project and an audited financial statement of the project.

SECTION 18. Sections 22(a), (b), and (d), Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) The administration of an enterprise zone is under the jurisdiction of the appropriate unit of local government, either a municipality or county, or any combination of these local governments, consistent with its function as specified in the state constitution. The governing body may delegate its administrative duties to an administrative authority. The administrative authority, if any, must be composed of 3, 5, 7, 9, 11, or 15 members, must be a viable and responsive body generally representative of all public or private entities having a stake in the development of the zone, and must include enterprise zone residents and representatives of the governing body and[;] local businesses[~~, and enterprise zone residents~~].

(b) The functions and duties of an administrative authority must be specified in the agreement negotiated by the governing body and the department [~~commission~~], or in amendments to the negotiated agreement. Those functions and duties should include decision-making authority and the authority to negotiate with affected entities.

(d) The governing body shall designate a liaison to communicate and negotiate with the department [~~commission~~], the administrative authority, an enterprise project, and other entities in or affected by an enterprise zone.

SECTION 19. Section 23, Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 23. ANNUAL REPORTS ON ENTERPRISE ZONES. Each municipality, county, or combination of municipalities or counties that authorized the creation of an enterprise zone shall submit an annual report to the department [~~commission~~], in such form as the department [~~commission~~] may require, on or before October [~~March~~] 1 of each year. The local administrative authority, if any, for the zone must approve the report. The report must include:

(1) a list of local incentives for community redevelopment available in the zone during the prior year;

(2) the use and revenue impact of the local incentives that the governing body committed to provide in the zone in the resolution designating the zone;

(3) the number of business establishments located in the zone during the prior year and the number of business establishments located in the zone in the year prior to the approval of the area as an enterprise zone;

(4) a copy of the report required pursuant to Section 103, Internal Revenue Code of 1986, for all industrial revenue bonds issued to finance projects located in the zone during the prior year; and

(5) a report on the attainment of revitalization goals for the zone.

SECTION 20. Section 24, Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 24. COORDINATION OF ENTERPRISE ZONE PROGRAMS WITH OTHER PROGRAMS OF THE FEDERAL AND STATE GOVERNMENT. (a) The department [~~commission~~] shall work together with the responsible federal and state agencies to promote the coordination of other relevant programs, including housing, community and economic development, small business, banking, financial assistance, transportation, and employment training programs that are carried out within an enterprise zone. It shall further work to expedite, to the greatest extent possible, the consideration of applications for the programs through the consolidation of forms or otherwise and shall work, whenever possible, for the consolidation of periodic reports required under the programs into one summary report.

(b) The department [~~commission~~] shall encourage other state agencies to give priority to businesses in enterprise zones for the receipt of grants, loans, or services.

SECTION 21. Section 151.429(d), Tax Code, is amended to read as follows:

(d) To receive a refund under this section, an enterprise project must apply to the comptroller for the refund. The department of commerce [~~Texas Economic Development Commission or other state agency that administers the Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes)~~] shall provide the comptroller with the assistance that the comptroller requires in administering this section.

SECTION 22. Section 151.429, Tax Code, is amended by adding Subsection (f) to read as follows:

(f) For the purposes of Subsection (a) of this section, items purchased by an enterprise project after the 91st day preceding the date it is designated as a project may be considered eligible for the refund.

SECTION 23. Subchapter I, Chapter 151, Tax Code, is amended by adding Section 151.431 to read as follows:

Sec. 151.431. SALES AND USE TAX REFUND FOR JOB RETENTION. (a) A qualified business operating in the enterprise zone's jurisdiction for at least three consecutive years may apply for and be granted a onetime refund of sales and use tax paid by the qualified business after certification of the qualified business as provided by Subsection (b) of this section to a vendor or directly to the state for the purchase of equipment or machinery sold to the business for use in an enterprise zone if the governing body or bodies certify to the Texas Department of Commerce that the business is retaining 10 or more jobs held by qualified employees during the year. For the purposes of this subsection "job" means an existing employment position of a qualified business that has provided employment to a qualified employee of at least 1,820 hours annually.

(b) Only qualified businesses that have been certified as eligible for a refund under this section by the governing body or bodies to the department and by the department to the comptroller, including certification of the number of jobs retained, are entitled to the refund. During each calendar year, no more than three eligible qualified businesses may be certified to the department by a municipality or county, subject to Subsection (c).

(c) If a municipality or county sponsors more than one enterprise zone, that municipality or county may certify to the department only a total of three eligible qualified businesses from all enterprise zones of which it is the governing body or one of the governing bodies and must allocate the three certifications for which it is eligible as evenly as possible among those zones. If an enterprise zone has more than one governing body, it is entitled to only the number of certifications that is equal to the total that all of its governing bodies may allocate to it, but in no case is it entitled to more than three certifications. A certification that must be allocated to a particular zone but would exceed the three allowable to that zone may not be made. The department by rule may require:

(1) multiple governing bodies jointly to certify all or some of the certifications for which a zone is eligible; and

(2) governing bodies to follow uniform procedures or selection criteria in selecting the qualified businesses certified to it under this section.

(d) The total amount of the onetime refund that a qualified business may apply for may not exceed $500 for each qualified employee retained, up to a limit of $5,000 for each qualified business.

(e) In this section, "enterprise zone," "governing body," "qualified business," and "qualified employee" have the meanings assigned to those terms by Section 3, Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes).

SECTION 24. Subchapter C, Chapter 171, Tax Code, is amended by adding Section 171.1015 to read as follows:

Sec. 171.1015. REDUCTION OF TAXABLE CAPITAL FOR INVESTMENT IN AN ENTERPRISE ZONE. (a) A corporation that has been

designated as an enterprise project as provided by the Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes) may deduct from its taxable capital allocated to this state 50 percent of its capital investment in the enterprise zone in which the enterprise project is located. The deduction may be taken on each franchise tax report that is based on a corporation's fiscal year during all or part of which the corporation is an enterprise project.

(b) The deduction authorized by this section is limited to the depreciated value of capital equipment or other investment that qualifies for depreciation for federal income tax purposes and that is placed in service in the zone after designation as an enterprise project. The depreciated value must be computed by a method which is otherwise acceptable for that corporation's franchise tax report and must be computed for each report on which it is taken by the same method of depreciation.

(c) To qualify for the deduction authorized by this section, an investment must be used in the normal course of business in the enterprise zone and must not be removed from the enterprise zone, except for repair or maintenance. Qualifying use and presence in the zone must occur during the accounting year on which the report is based.

(d) The deduction authorized by this section may not be used to reduce taxable capital below a zero value and no carryover of unused deductions to a later privilege period is allowed.

(e) In this section, "enterprise project" and "enterprise zone" have the meanings assigned to those terms by Section 3, Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes).

SECTION 25. Chapter 171, Tax Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. REFUNDS

Sec. 171.501. REFUND FOR JOB CREATION IN ENTERPRISE ZONE. (a) A corporation that has been certified a qualified business as provided by the Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes) may apply for and be granted a refund of franchise tax paid with an initial or annual report if the governing body or bodies certify to the Texas Department of Commerce that the business has created 10 or more new jobs in its enterprise zone held by qualified employees during the calendar year that contains the end of the accounting period on which the report is based. The Texas Department of Commerce shall certify eligibility for any refund to the comptroller.

(b) Only qualified businesses that have been certified as eligible for a refund under this section by the governing body or bodies to the department and by the department to the comptroller are entitled to the refund. During each calendar year, no more than three eligible qualified businesses may be certified to the department by a municipality or county, subject to Subsection (c).

(c) If a municipality or county sponsors more than one enterprise zone, that municipality or county may certify to the department only a total of three eligible qualified businesses from all enterprise zones of which it is the governing body or one of the governing bodies and must allocate the three certifications for which it is eligible as evenly as possible among those zones. If an enterprise zone has more than one governing body, it is entitled to only the number of certifications that is equal to the total that all of its governing bodies may allocate to it, but in no case is it entitled to more than three certifications. A certification that must be allocated to a particular zone but would exceed the three allowable to that zone may not be made. The department by rule may require:

(1) multiple governing bodies jointly to certify all or some of the certifications for which a zone is eligible; and

(2) governing bodies to follow uniform procedures or selection criteria in selecting the qualified businesses certified to it under this section.

(d) The amount of a refund under this section is the lesser of $5,000 or 25 percent of the amount of taxes paid for any one privilege period. For purposes of this subsection, the initial and second periods are considered to be the same privilege period.

(e) In this section, "enterprise zone," "governing body," "new job," "qualified business," and "qualified employee" have the meanings assigned to those terms by Section 3, Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes).

SECTION 26. Chapter 311, Tax Code, is amended by adding Section 311.0031 to read as follows:

Sec. 311.0031. ENTERPRISE ZONE. Designation of an area as an enterprise zone under the Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes) constitutes designation of the area as a reinvestment zone under this chapter without further hearing or other procedural requirements other than those provided by the Texas Enterprise Zone Act.

SECTION 27. Section 311.005(a), Tax Code, as amended by **S.B No. 221**, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(a) To be designated as a reinvestment zone, an area must:

(1) substantially arrest or impair the sound growth of the municipality creating the zone, retard the provision of housing accommodations, or constitute an economic or social liability and be a menace to the public health, safety, morals, or welfare in its present condition and use because of the presence of:

(A) a substantial number of substandard, slum, deteriorated, or deteriorating structures;

(B) the predominance of defective or inadequate sidewalk or street layout;

(C) faulty lot layout in relation to size, adequacy, accessibility, or usefulness;

(D) unsanitary or unsafe conditions;

(E) the deterioration of site or other improvements;

(F) tax or special assessment delinquency exceeding the fair value of the land;

(G) defective or unusual conditions of title; or

(H) conditions that endanger life or property by fire or other cause;

(2) be predominantly open and, because of obsolete platting, deterioration of structures or site improvements, or other factors, substantially impair or arrest the sound growth of the municipality; or

(3) be in a federally assisted new community located in the municipality or in an area immediately adjacent to a federally assisted new community[; or

~~[(4) be designated as an enterprise zone under the Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes)~~].

SECTION 28. Subchapter B, Chapter 312, Tax Code, is amended by adding Section 312.2011 to read as follows:

Sec. 312.2011. ENTERPRISE ZONE. Designation of an area as an enterprise zone under the Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes) constitutes designation of the area as a reinvestment zone under this subchapter without further hearing or other procedural requirements other than those provided by the Texas Enterprise Zone Act.

SECTION 29. Section 312.202(a), Tax Code, as amended by **S.B No. 221**, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(a) To be designated as a reinvestment zone under this subchapter, an area must:

(1) substantially arrest or impair the sound growth of the municipality creating the zone, retard the provision of housing accommodations, or constitute an economic or social liability and be a menace to the public health, safety, morals, or welfare in its present condition and use because of the presence of:

(A) a substantial number of substandard, slum, deteriorated, or deteriorating structures;

(B) the predominance of defective or inadequate sidewalks or streets;

(C) faulty size, adequacy, accessibility, or usefulness of lots;

(D) unsanitary or unsafe conditions;

(E) the deterioration of site or other improvements;

(F) tax or special assessment delinquency exceeding the fair value of the land;

(G) defective or unusual conditions of title;

(H) conditions that endanger life or property by fire or other cause; or

(I) any combination of these factors;

(2) be predominantly open and, because of obsolete platting, deterioration of structures or site improvements, or other factors, substantially impair or arrest the sound growth of the municipality;

(3) be in a federally assisted new community located in a home-rule municipality or in an area immediately adjacent to a federally assisted new community located in a home-rule municipality;

(4) be located entirely in an area that meets the requirements for federal assistance under Section 119 of the Housing and Community Development Act of 1974 (42 U.S.C. Section 5318);

(5) encompass signs, billboards, or other outdoor advertising structures designated by the governing body of the municipality for relocation, reconstruction, or removal for the purpose of enhancing the physical environment of the municipality, which the legislature declares to be a public purpose; or

(6) [~~be designated as an enterprise zone under the Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes); or~~

[~~(7)~~] be reasonably likely as a result of the designation to contribute to the retention or expansion of primary employment or to attract major investment in the zone that would be a benefit to the property and that would contribute to the economic development of the municipality.

SECTION 30. Subchapter C, Chapter 312, Tax Code, is amended by adding Section 312.4011 to read as follows:

Sec. 312.4011. ENTERPRISE ZONE. Designation of an area as an enterprise zone under the Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes) constitutes designation of the area as a reinvestment zone under this subchapter without further hearing or other procedural requirements other than those provided by the Texas Enterprise Zone Act.

SECTION 31. (a) Except as provided by Subsections (b) and (c) of this section, this Act takes effect immediately.

(b) Section 23 of this Act takes effect September 1, 1991.

(c) Sections 24 and 25 of this Act take effect September 1, 1989.

SECTION 32. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

Floor Amendment - Harrison

Amend **C.S.S.B. 1205** as follows:

(1) In section 2, Subsection 4, Subdivision (4), insert ":" after "with" and strike "pervasive poverty, unemployment, and economic distress"; and substitute the following:

(a) pervasive poverty, unemployment, and economic distress; or

(b) designated a rural area as defined by section 481.085 of chapter 481, government code."

The amendments were read.

Senator Uribe moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **S.B. 1205** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Uribe, Chairman; Sims, Truan, Carriker and Barrientos.

HOUSE BILL 646 ON SECOND READING

On motion of Senator McFarland and by unanimous consent, the regular order of business and Senate Rule 5.14 were suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 646, Relating to the manner in which an arrested person is informed of his rights by a magistrate.

The bill was read second time.

Senator Caperton offered the following amendment to the bill:

Amend **H.B. 646** by striking all below the enacting clause and substituting the following:

SECTION 1. Article 15.17(a), Code of Criminal Procedure, is amended to read as follows:

(a) In each case enumerated in this Code, the person making the arrest shall without unnecessary delay take the person arrested or have him taken before some magistrate of the county where the accused was arrested or, if necessary to provide more expeditiously to the person arrested the warnings described by this article, before a magistrate in a county bordering the county in which the arrest was made. The arrested person may be taken before the magistrate in person or the image of the arrested person may be broadcast by closed circuit television to the magistrate. The magistrate shall inform in clear language the person arrested, either in person or by closed circuit television, of the accusation against him and of any affidavit filed therewith, of his right to retain counsel, of his right to remain silent, of his right to have an attorney present during any interview with peace officers or attorneys representing the state, of his right to terminate the interview at any time, of his right to request the appointment of counsel if he is indigent and cannot afford counsel, and of his right to have an examining trial. He shall also inform the person arrested that he is not required to make a statement and that any statement made by him

may be used against him. The magistrate shall allow the person arrested reasonable time and opportunity to consult counsel and shall admit the person arrested to bail if allowed by law. A closed circuit television system may not be used under this subsection unless the system provides for a two-way communication of image and sound between the arrested person and the magistrate. A recording of the communication between the arrested person and the magistrate shall be made. The recording shall be preserved until the earlier of the date on which the pretrial hearing ends or the 91st day after the date on which the recording is made if the person is charged with a misdemeanor or the 120th day after the date on which the record is made if the person is charged with a felony. The counsel for the defendant may obtain a copy of the recording on payment of a reasonable amount to cover costs of reproduction.

SECTION 2. Subsection (h), Section 11.11, Family Code, is amended to read as follows:

(h) The violation of any temporary restraining order, temporary injunction, or other temporary order issued under this section is punishable by contempt. When enforcement of an order is sought by a motion for contempt, the respondent shall be personally served with notice directing the respondent to appear for a hearing at a designated time and place. If the respondent fails to appear for the hearing at the time and place designated, the movant's attorney may request the issuance of a capias for the arrest of the respondent. If the court grants the request, it shall also set an appearance bond or security in a reasonable amount at the same time that the capias is issued. It shall be rebuttably presumed that an appearance bond or security in the amount of $1,000, or a cash bond in the amount of $250 is reasonable. The capias shall be entered [~~treated~~] by law enforcement officials [~~in the same manner as a misdemeanor arrest warrant for a criminal offense, including entry~~] in a local police, [~~or~~] sheriff's, and state computer record of outstanding warrants[~~, but shall not be entered in a state or federal computer record of outstanding warrants~~]. If the respondent is taken into custody and released on bond, the bond shall be conditioned on the respondent's promise to appear in court for a hearing on the merits as required by the court without the necessity of further personal service of notice on the respondent by an officer. If the respondent is taken into custody and not released on bond, the respondent shall be taken before the court that issued the capias on or before the first working day after the arrest for a release hearing to determine whether the respondent's appearance in court at a designated time and place can be assured by a method other than by posting the bond or security previously established. If the court makes this determination, the court may set a hearing on the alleged contempt for a designated time and place without the necessity of further notice to the respondent. If the court is not satisfied that the respondent's appearance in court can be assured and the respondent remains in custody, a hearing on the alleged contempt shall be held as soon as practicable, but not later than five days after the day that the respondent was taken into custody unless the accelerated hearing is waived by the respondent and by the attorney as provided by Section 14.32(f) of this code. If a cash bond has been posted and the respondent appears at the hearing as directed, and if the respondent is found to be in contempt for failure to pay child support as ordered, the court shall order the respondent to execute an assignment of the cash bond to the child support obligee or to a person designated by the court up to the amount of any child support arrearages determined to exist. If the respondent fails to appear at the hearing as directed and the appearance bond or security has been forfeited, and if the respondent has been found to be in contempt for failure to pay child support as ordered, the proceeds of any judgment on the bond or security shall be paid to the obligee or to a person designated by the court up to the amount of any child support arrearages determined to exist. The obligee may bring suit on the bond in his own right.

SECTION 3. Section 11.155, Family Code, is amended to read as follows:

Sec. 11.155. CONTENTS OF [~~INCLUSION OF SOCIAL SECURITY NUMBERS IN~~] DECREE. (a) A decree in a suit affecting the parent-child relationship must contain the social security number and driver's license number of each party to the suit, including the child, except that the child's social security number or driver's license number is not required if the child has not been assigned a social security number or driver's license number.

(b) Except as provided by Subsection (c) of this section, a party to a decree in a suit affecting the parent-child relationship that orders child support or possession of or access to a child shall:

(1) when the decree is entered, provide the clerk of court with the party's current residence address, mailing address, home telephone number, name of employer, address of employment, and work telephone number; and

(2) before the 10th day after the date any information in Subdivision (1) of this subsection changes, inform the clerk and all other parties of the change as long as any person, by virtue of the decree, is under an obligation to pay child support or is entitled to possession of or access to a child.

(c) If a court finds after notice and hearing that requiring a party to provide the information required by Subsection (b) of this section is likely to cause the child or a conservator harassment, serious harm, or injury, the court may:

(1) order the information not to be disclosed to another party; or

(2) enter any other order as the interests of justice require.

(d) A decree in a suit affecting the parent-child relationship that orders child support or possession of or access to a child must contain the following language:

"Failure to obey a court order for child support or for possession of or access to a child may result in further litigation to enforce the order, including contempt of court. A finding of contempt may be punished by confinement in jail for up to six months, a fine of up to $500 for each violation, and a money judgment for payment of attorney's fees and court costs.

"Failure of a party to make a child support payment to the place and in the manner required by a court order may result in the party not receiving credit for making the payment.

"Failure of a party to pay child support does not justify denying that party court-ordered possession of or access to a child. Refusal by a party to allow possession of or access to a child does not justify failure to pay court-ordered child support to that party."

(e) Except as provided by Subsection (c), a decree in a suit affecting the parent-child relationship that orders child support or possession of or access to a child must also contain the following language in boldfaced type or in capital letters:

"Each person who is a party to this order or decree is ordered to notify the clerk of this court within 10 days of any change in the party's current resident address, mailing address, home telephone number, name of employer, address of place of employment, and work telephone number. The duty to furnish this information to the clerk of the court continues as long as any person, by virtue of this order or decree, is under an obligation to pay child support or is entitled to possession of or access to a child. Failure to obey the order of this court to provide the clerk with the current mailing address of a party may result in the issuance of a capias for the arrest of the party if that party cannot be personally served with notice of a hearing at an address of record."

(f) The clerk of the court shall maintain a file of any information provided by a party under this section and shall, unless otherwise ordered by the court, provide the information on request, without charge, to a party, the attorney general, a domestic relations office, a child support collection office, or

any other person designated to prosecute actions under the Revised Uniform Reciprocal Enforcement of Support Act (Chapter 21 of this code) or to enforce an order providing for child support or possession of or access to a child.

SECTION 4. Subsection (a), Section 14.31, Family Code, is amended to read as follows:

[~~(a) Proceeding Commenced By Motion.~~] Enforcement proceedings under this subchapter shall be commenced by the filing of a motion to enforce a final order, judgment, or decree.

SECTION 5. Subchapter B, Chapter 14, Family Code, is amended by adding Section 14.311 to read as follows:

Sec. 14.311. CONTENTS OF MOTIONS GENERALLY. (a) Information. Motions under this subchapter shall, in ordinary and concise language, give the respondent notice of the provisions of the final order, decree, or judgment sought to be enforced, the manner of noncompliance, and the relief sought by the movant.

(b) Child Support Order. If enforcement of a child support order is sought, the motion shall state the amount owed under the terms of the order, the amount paid, and the amount of arrearage. It is not required that the movant plead or prove that the underlying order is enforceable by contempt to obtain other appropriate enforcement remedies.

(c) Payment Record. The movant may attach a copy of a record of child support payments maintained by a state or local child support registry; if so attached, the payment record constitutes a prima facie showing of the facts asserted therein, subject to the right of the respondent to offer controverting evidence, and may be admitted as evidence of the truth of payments made and not made as reflected by the payment record.

(d) Signature. The movant or the movant's attorney shall sign the motion.

(e) Anticipated Violations. If the movant pleads that there have been repeated past violations of the court order, the movant may plead that anticipated future violations of a similar nature may arise between the filing of the motion and the date of the hearing.

(f) Special Exceptions. If a respondent specially excepts to the pleadings or moves to strike, the court shall rule on the exceptions or the motion before it hears the motion to enforce. If an exception is sustained, the court shall give the movant an opportunity to replead and continue the hearing to a designated date and time without the requirement of additional service.

SECTION 6. Subchapter B, Chapter 14, Family Code, is amended by adding Section 14.312 to read as follows:

Sec. 14.312. MOTION FOR CONTEMPT. (a) Child Support. If contempt for failure to pay child support is sought, the motion must allege the portion of the order allegedly violated, that the respondent had the ability to pay all or a portion of the court-ordered support on the dates support was due but was not paid or not timely paid, must specify as to each date of alleged contempt the amount due and the amount paid, if any, and, as applicable, must allege that the respondent has the present ability to comply with the order sought to be enforced.

(b) All Other Motions. If contempt for failure to obey an order relating to possession of or access to a child or for violation of other provisions of a final order, decree, or judgment is sought, the motion must allege the portion of the order allegedly violated, that the respondent had the ability to comply with the court order at the time of the alleged violation, and, as to each violation for which punishment is sought, the date, place, and, if applicable, the time of each occasion upon which the respondent has not complied with the order.

SECTION 7. Subchapter B, Chapter 14, Family Code, is amended by adding Section 14.313 to read as follows:

Sec. 14.313. JOINDER OF CLAIMS AND REMEDIES. (a) Discretionary Joinder. A party seeking enforcement of a final court order under this subchapter may join in the same proceeding, either independently or alternately, as many claims and remedies as he has against another party, whether such claims arise under this chapter, other provisions of this subtitle, or other provisions or rules of law.

(b) Claims. Claims that may be joined include but are not limited to proceedings to:

(1) enforce a child support order by contempt under Section 14.40 of this code;

(2) reduce child support arrearages to judgment under Section 14.41 of this code;

(3) require a person obligated to support a child to furnish bond or other security under Section 14.42 of this code;

(4) require withholding from earnings under Section 14.43 or Subchapter C of this chapter;

(5) enforce a right of possession of or access to a child by contempt under Section 14.50 of this code;

(6) require a person to furnish bond or other security to ensure compliance with a court order for possession of or access to a child under Section 14.51 of this code;

(7) transfer the proceeding because venue is improper under Section 11.06 of this code;

(8) petition for further action concerning a child under Section 11.07 of this code;

(9) modify an existing order or decree under Section 14.08 of this code;

(10) petition for a writ of habeas corpus under Section 14.10 of this code;

(11) recover damages under Chapter 36 of this code;

(12) initiate procedures for withholding child support from earnings without the necessity of further action by the court under Sections 14.44 and 14.45 of this code; and

(13) recover under any reciprocal enforcement of support act or interstate income withholding act whether as rendering or responding state.

SECTION 8. Subchapter B, Chapter 14, Family Code, is amended by adding Section 14.314 to read as follows:

Sec. 14.314. MOTION FOR ENFORCEMENT OF EXISTING COURT ORDER. (a) Setting the Hearing. On the filing of a motion under this subchapter for enforcement of an existing court order with regard to possession of or access to a child or child support, the court shall order the time, place, and date of the hearing at which the respondent shall appear and respond to the motion. It is not necessary for the notice of hearing or show cause order to repeat the matters pleaded or prayed for in the motion for enforcement.

(b) Notice of Hearing, Personal Service. Except as provided by Subsection (c) of this section, notice of a motion seeking enforcement of an existing court order providing for child support, possession of or access to a child shall be personally served on the respondent at least 10 days before the date of a hearing on the motion.

(c) Notice of Hearing, First Class Mail. (1) If a party has been ordered under Section 11.155 of this code to provide the clerk of the court with the party's current mailing address, notice of a motion seeking enforcement of an existing court order providing for child support or for possession of or access to a child may be served by mailing a copy of the notice to the respondent, together with a copy of the motion, by first class mail to the last mailing address of the respondent on file with

the clerk of the court. The clerk of the court, movant's attorney, or any person entitled to the address information as provided by Section 11.155 of this code may send the notice. A person who sends the notice shall file of record a certificate of service showing the date of mailing and the name of the person who sent the notice. A party who appears at the hearing at the time and place designated by the first class mail notice and who is present when the case is called makes a general appearance for all purposes in the enforcement proceeding.

(2) The notice shall, in plain and concise language, state the time, date, and place of the hearing and shall state the following: "This notice is a request for you to appear at the designated time, date, and place of the hearing set out in this notice in order to defend yourself against the allegations made against you in the attached or enclosed motion. You are not required to appear at this hearing; however, if you do not appear, a sheriff or constable may and probably will formally serve a court order on you at your place of residence or employment, or wherever you may be found, requiring you to appear at another hearing to defend yourself against the motion. If a sheriff or constable has to serve you, the court may require you to pay for the cost of the service. If you choose to appear at the hearing set out in this notice, then you will have made a formal and legal appearance in court. In this case, no further service of the enclosed motion will have to be made on you. If you do appear at the hearing set out in this notice, you should be aware of the following: (A) you do not have to talk to the party who filed the motion against you or that party's attorney and, if you do talk with them, anything you say may and probably will be used against you; (B) you have the right to be represented by your own attorney; (C) if the motion seeks to have you held in contempt and jailed or fined, the judge may appoint an attorney to represent you if you can prove to the judge that you cannot afford an attorney; and (D) you may have the hearing at the time, date, and place in this notice, or, on your request, the court must set a hearing at a later time of not less than five days in the future; if the judge does set the hearing in the future and you do not appear at that future hearing, the judge may order a sheriff or constable to arrest you and bring you to court for a hearing on the motion. You are advised to consult with an attorney in order to understand all of your rights before making any decision under this notice."

(d) Failure to Appear After First Class Mail Notice. If a respondent who has been sent notice to appear at a hearing by first class mail does not appear at the designated time, place, and date to respond to a motion seeking enforcement of an existing court order, personal service of notice of a hearing as provided by Subsection (b) of this section shall be attempted.

SECTION 9. Subchapter B, Chapter 14, Family Code, is amended by adding Section 14.315 to read as follows:

Sec. 14.315. MOTION FOR ENFORCEMENT JOINED WITH OTHER CLAIMS OR REMEDIES. (a) Contents. If a motion for enforcement has been joined with other claims, the court shall order the time, place, and date of the hearing at which the respondent shall appear and respond to the motion. It is not necessary for the notice of hearing or show cause order to repeat the matters pleaded or prayed for in the motion for enforcement.

(b) Hearing. The hearing shall be held no sooner than 10 a.m. of the Monday next after the expiration of 20 days from the date of service.

(c) Notice. In a proceeding under this section, the provisions of the Texas Rules of Civil Procedure applicable to the filing of an original lawsuit apply, and each party whose rights, privileges, duties, or powers may be affected by the claim is entitled to receive notice by service of citation commanding the person to appear by filing a written answer.

SECTION 10. Subchapter B, Chapter 14, Family Code, is amended by adding Section 14.317 to read as follows:

Sec. 14.317. FAILURE OF RESPONDENT TO APPEAR; CAPIAS. (a) Notice by Personal Service. If a respondent who has been personally served with notice to appear at a hearing at a designated time, place, and date to respond to a motion for enforcement, whether the motion is joined with other claims and remedies or only seeks enforcement of an existing court order, does not appear, the court may upon proper proof grant default judgment for the relief sought and issue a capias for the arrest of the respondent. The court may not adjudicate the respondent in contempt.

(b) Personal Service Unsuccessful After Order to Provide Mailing Address. The court shall issue a capias for the arrest of a party if:

(1) a party is allegedly in arrears in court-ordered child support payments;

(2) a party has been ordered under Section 11.155 of this code to provide the clerk of the court with the party's current mailing address;

(3) did not appear at the hearing; and

(4) subsequently an attempt to serve notice of the hearing by pesonal service on the party has been unsuccessful despite diligent efforts to serve process at the latest address on file with the clerk and at any other address known to the moving party at which the respondent may be served.

(c) No Notice. The court may not adjudicate the party in contempt in absentia, nor may the court grant a default judgment against a party for any other relief sought in the absence of service of notice of the hearing or an answer or appearance by the party.

(d) Duty of Law Enforcement Officials. The capias shall be treated by law enforcement officials in the same manner as an arrest warrant for a criminal offense, including entry in a local police, sheriff's, or state computer record of outstanding warrants.

(e) Fee for Capias. The fee for a capias issued under this section is the same as the fee for issuance of a writ under Section 51.317, Government Code. The fee for service of a capias issued under this section is the same as the fee for service of a writ in civil cases generally.

SECTION 11. Subchapter B, Chapter 14, Family Code, is amended by adding Section 14.318 to read as follows:

Sec. 14.318. BOND OR SECURITY; RELEASE OF RESPONDENT. (a) Appearance Bond or Security. If the court issues a capias, it shall also set an appearance bond or security in a reasonable amount at the same time that the capias is issued. It shall be rebuttably presumed that an appearance bond or security in the amount of $1,000 or a cash bond in the amount of $250 is reasonable. Evidence that the respondent has attempted to evade service of process, has previously been found guilty of contempt, or has accrued arrearages under a child support obligation over $1,000 is sufficient to rebut the presumption. If the court finds that the presumption is rebutted, the court shall set bond that is reasonable under the circumstances.

(b) Conditional Release. If the respondent is taken into custody and released on bond, the bond shall be conditioned on the respondent's promise to appear in court for a hearing on the merits as required by the court without the necessity of further personal service of notice on the respondent.

(c) Release Hearing. If the respondent is taken into custody and not released on bond, the respondent shall be taken before the court that issued the capias on or before the first working day after the arrest for a release hearing to determine whether the respondent's appearance in court at a designated time and place can be assured by a method other than by posting the bond or security previously established. If the court makes this determination, the court may set a hearing on the alleged contempt for a designated time and place without the necessity of further

notice to the respondent. If the court is not satisfied that the respondent's appearance in court can be assured and the respondent remains in custody, a hearing on the alleged contempt shall be held as soon as practicable, but not later than five days after the day that the respondent was taken into custody unless the accelerated hearing is waived by the respondent and by the attorney as provided by Section 14.32(f) of this code.

(d) Cash Bond as Support. If a cash bond has been posted and the respondent appears at the hearing as directed and if the respondent is found to be in contempt for failure to pay child support as ordered, the court shall order the respondent to execute an assignment of the cash bond to the child support obligee or to a person designated by the court up to the amount of any child support arrearages determined to exist.

(e) Appearance Bond or Security as Support. If the respondent fails to appear at the hearing as directed and the appearance bond or security has been forfeited and if the respondent has been found to be in contempt for failure to pay child support as ordered, the proceeds of any judgment on the bond or security shall be paid to the obligee or to a person designated by the court up to the amount of any child support arrearages determined to exist. The obligee may bring suit on the bond.

SECTION 12. Subsection (a), Section 14.33, Family Code, is amended to read as follows:

(a) Contents. An enforcement order shall contain findings setting out in ordinary and concise language [~~specifically and with particularity or incorporating by reference~~] the provisions of the final order, decree, or judgement for which enforcement was sought, the acts or omissions that are the subject of the order, the manner of noncompliance [~~and the time, date, and place of each and any occasion on which the respondent failed to comply with such provision~~], and [~~setting out~~] the relief awarded by the court. Provided, however, where the order imposes incarceration or a fine, an enforcement order shall contain findings setting out specifically and with particularity or incorporating by reference the provisions of the final order, decree, or judgment for which enforcement was sought and the time, date, and place of each and any occasion on which the respondent failed to comply with such provision and setting out the relief awarded by the court.

SECTION 13. Subsection (b), Section 14.41, Family Code, is amended to read as follows:

(b) Time Limitations. The court may not confirm the amount of child support in arrears and may not enter a judgment for unpaid child support payments that were due and owing more than 10 years before the filing of the motion to render judgment under this section. The court retains jurisdiction to enter judgment for past-due child support obligations if a motion to render judgment for the arrearages is filed within four [~~two~~] years after:

(1) the child becomes an adult; or

(2) the date on which the child support obligation terminates pursuant to the decree or order or by operation of law.

SECTION 14. The following laws are repealed:

(1) Subsections (b), (c), (d), and (e), Section 14.31, Family Code; and

(2) Chapter 46, Human Resources Code.

SECTION 15. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read and was adopted viva voce vote.

On motion of Senator McFarland and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 646 ON THIRD READING

Senator McFarland moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 646** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Parmer.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Parmer.

MOTION TO PLACE COMMITTEE SUBSTITUTE HOUSE BILL 1178 ON SECOND READING

Senator Green moved to suspend the regular order of business to take up for consideration at this time:

C.S.H.B. 1178, Relating to costs incurred and notice that may be given by a financial institution when required or requested to disclose its records.

The motion was lost by the following vote: Yeas 14, Nays 13. (Not receiving two-thirds vote of Members present)

Yeas: Armbrister, Brooks, Caperton, Carriker, Edwards, Green, Haley, Johnson, Leedom, Lyon, McFarland, Parker, Whitmire, Zaffirini.

Nays: Barrientos, Brown, Dickson, Glasgow, Henderson, Krier, Montford, Ratliff, Santiesteban, Sims, Tejeda, Truan, Uribe.

Absent: Bivins, Harris, Washington.

Absent-excused: Parmer.

(Senator Krier in Chair)

CONFERENCE COMMITTEE ON HOUSE BILL 2603

Senator Glasgow called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 2603** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on **H.B. 2603** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Glasgow, Chairman; Carriker, Haley, Ratliff and Dickson.

COMMITTEE SUBSTITUTE HOUSE BILL 151 ON SECOND READING

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 151, Relating to the reduction and simplification of paperwork generated by state agencies.

The bill was read second time and was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 151 ON THIRD READING

Senator Zaffirini moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 151** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Parmer.

The bill was read third time and was passed viva voce vote.

CONFERENCE COMMITTEE ON HOUSE BILL 3143

Senator Bivins called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 3143** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on **H.B. 3143** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Bivins, Chairman; Ratliff, Haley, Armbrister and Brown.

CONFERENCE COMMITTEE REPORT HOUSE BILL 843

Senator Whitmire submitted the following Conference Committee Report:

Austin, Texas
May 28, 1989

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 843** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

WHITMIRE	CRISS
GREEN	SHEA
WASHINGTON	LUCIO
HARRIS	SOILEAU
BARRIENTOS	BARTON
On the part of the Senate	On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

HOUSE BILL 2896 ON SECOND READING

On motion of Senator Tejeda and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2896, Relating to fees charged for the preparation of instruments affecting title to real property.

The bill was read second time.

Senator Tejeda offered the following amendment to the bill:

Amend **H.B. 2896** by adding a new SECTION 3 to read as follows and renumbering subsequent sections accordingly.

SECTION 3. Section 83.002 EXPENSES. This chapter does not prevent an attorney from paying that attorney's own secretarial, paralegal, or other ordinary and reasonable expenses necessary and actually incurred by and under the control of the attorney for the preparation of legal instruments.

The amendment was read and was adopted viva voce vote.

On motion of Senator Tejeda and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 2896 ON THIRD READING

Senator Tejeda moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 2896** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Parmer.

The bill was read third time and was passed viva voce vote.

HOUSE BILL 2609 ON SECOND READING

On motion of Senator Barrientos and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2609, Relating to insurance and benefits coverage on transfer from one institution of higher education to another, from an institution of higher education to a state department or agency, or from a state agency or department to an institution of higher education without meeting preexisting conditions requirements.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 2609 ON THIRD READING

Senator Barrientos moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 2609** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Parmer.

The bill was read third time and was passed viva voce vote.

HOUSE BILL 1502 ON SECOND READING

On motion of Senator Uribe and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1502, Relating to a transfer and appropriation of money to the produce recovery fund.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 1502 ON THIRD READING

Senator Uribe moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 1502** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Parmer.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Parmer.

HOUSE BILL 430 ON SECOND READING

On motion of Senator Brooks and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 430, Relating to the payment of certain laborers, workers, and mechanics under public works contracts.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 430 ON THIRD READING

Senator Brooks moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 430** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Parmer.

The bill was read third time and was passed viva voce vote.

HOUSE BILL 1285 ON SECOND READING

On motion of Senator Caperton, on behalf of Senator Parmer and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1285, Relating to the creation, maintenance, preservation, microfilming, destruction, and other disposition of, and access to, governmental records; providing penalties.

The bill was read second time.

Senator Caperton offered the following committee amendment to the bill:

Amend **H.B. 1285** as follows:

(1) Delete Sections 6, 10 and 48.
(2) Renumber the remaining sections accordingly.

The committee amendment was read and was adopted viva voce vote.

Senator Caperton offered the following amendment to the bill:

Amend the Senate Committee Printing of **H.B. 1285** as follows:

1. Beginning on page 27 delete lines 20 through and including line 70, continuing on page 28 delete lines 1 through and including line 70, continuing on page 29 delete lines 1 through and including line 8 and substitute in lieu thereof the following:

"SECTION 10. Subsections (a), (c), and (d), Section 3, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973, (Article 6252-17a, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) All information collected, assembled, or maintained by or for governmental bodies, except in those situations where the governmental body does not have either a right of access to or ownership of the information, pursuant to law or ordinance or in connection with the transaction of official business is public information and available to the public during normal business hours of any governmental body, with the following exceptions only:

(1) information deemed confidential by law, either Constitutional, statutory, or by judicial decision;

(2) information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; provided, however, that all information in personnel files of an individual employee within a governmental body is to be made available to that individual employee or his designated representative as is public information under this Act;

(3) information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection;

(4) information which, if released, would give advantage to competitors or bidders;

(5) information pertaining to the location of real or personal property for public purposes prior to public announcement of the project, and information pertaining to appraisals or purchase price of real or personal property for public purposes prior to the formal award of contracts therefor;

(6) drafts and working papers involved in the preparation of proposed legislation;

(7) matters in which the duty of the Attorney General of Texas or an attorney of a political subdivision, to his client, pursuant to the Rules and Canons of Ethics of the State Bar of Texas are prohibited from disclosure, or which by order of a court are prohibited from disclosure;

(8) records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution;

(9) private correspondence and communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy;

(10) trade secrets and commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision;

(11) inter-agency or intra-agency memorandums or letters which would not be available by law to a party [~~other than one~~] in litigation with the agency;

(12) information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, and/or securities, as that term is defined in the Texas Securities Act;

(13) geological and geophysical information and data including maps concerning wells, except information filed in connection with an application or proceeding before any agency or an electric log confidential under Subchapter M, Chapter 91, Natural Resources Code;

(14) student records at educational institutions funded wholly, or in part, by state revenue; but such records shall be made available upon request of educational institution personnel, the student involved, that student's parent, legal guardian, or spouse or a person conducting a child abuse investigation required by Section 34.05, Family Code;

(15) birth and death records maintained by the Bureau of Vital Statistics of the Texas Department of Health [~~or by a local registration official~~];

(16) the audit working papers of the State Auditor;

(17) the home addresses and home telephone numbers of each official and employee of a governmental body except as otherwise provided by Section 3A of this Act, and of peace officers as defined by Article 2.12, Code of Criminal Procedure, 1965, as amended, or by Section 51.212, Texas Education Code; [~~and~~]

(18) information contained on or derived from triplicate prescription forms filed with the Department of Public Safety pursuant to Section 3.09 of the Texas Controlled Substances Act, as amended (Article 4476-15, Vernon's Texas Civil Statutes); [~~and~~]

(19) photographs that depict a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, the release of which would endanger the life or physicial safety of the officer, unless:

(A) the officer is under indictment or charged with an offense by information; or

(B) the officer is a party in a fire or police civil service hearing or a case in arbitration; or

(C) the photograph is introduced as evidence in a judicial proceeding;[~~:~~]

(20)[~~(19)~~] rare books and original manuscripts which were not created or maintained in the conduct of official business of a governmental body and which are held by an private or public archival and manuscript repository for the purposes of historical research;

(21)[~~(20)~~] oral history interviews, personal papers, unpublished letters, and organizational records of nongovernmental entities, which were not created or maintained in the conduct of official business of a governmental body and which are held by any private or public archival and manuscript repository for the purposes of historical research, to the extent that the archival and manuscript repository and the donor of the interviews, papers, letters, and records may agree to limit disclosure of the item; and

(22)[~~(21)~~] curriculum objectives and test items developed by educational institutions that are funded wholly or in part by state revenue and test items developed by licensing agencies or governmental bodies.

(c) The officer for public records [~~custodian of the records~~] may in any instance within his discretion make public any information protected under the exceptions contained within Section 3, Subsection (a), that is not deemed confidential by law [~~6, 9, 11, and 15~~]. A photograph exempt from disclosure under Section 3(a)(19), as added by Chapter 341 Acts of the 70th Legislature Regular Session, 1987, may also be made public, but only if the peace officer or security officer gives written consent to the disclosure. [~~The custodian of a photograph exempt from disclosure under Section 3(a)(19) may make the photograph public, but only if the officer gives written consent to the disclosure.~~]

(d) It is not intended that the officer for [~~custodian of~~] public records or the officer's agent may be called upon to perform general research within the reference and research archives and holdings of state libraries.

SECTION 11. Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), is amended by adding Section 3B to read as follows:

Sec. 3B. SPECIAL RIGHT OF ACCESS TO CONFIDENTIAL INFORMATION. (a) A person or the authorized representative of a person has, beyond the right of the general public, a special right of access to and to copies of any records held by a governmental body that contain information relating to the person that is protected from public disclosure by laws intended to protect that person's privacy interests. The fact that the information is deemed confidential by privacy principles under this Act does not grant the governmental body the right to deny access to the person, or the person's representative, to whom the information relates.

However, laws and provisions of this Act, other than ones intended to protect that person's privacy interest, may still form the basis for denial of access to the person or the person's representative to whom the information relates.

(b) Consent for the release of information excepted from disclosure to the general public but available to a specific person under Subsection (a) of this section must be in writing and signed by the specific person or the person's authorized representative. A person under 18 years of age may consent to the release of information under this subsection only with the additional written authorization of the person's parent or guardian. A person who has been adjudicated incompetent to manage the person's personal affairs or for whom an attorney ad litem has been appointed may consent to the release of information under this subsection only by the written authorization of the designated legal guardian or attorney ad litem.

(c) A release of information pursuant to Subsection (a) of this section is not a prohibited release of information to the public under Subsection (a) of Section 10 of this Act.

(d) A person who receives information obtained under this section may disclose the information to others only to the extent consistent with the authorized purposes for which consent to release the information was obtained.

(e) If a governmental body determines that information covered by a special right of access under this section is excepted from disclosure under any other

exception under Subsection (a) of Section 3 of this Act, the governmental body shall, before disclosing the information, submit a written request for a decision to the attorney general under the procedures described in Section 7 of this Act. If a decision is not so requested, the governmental body shall release the information to the person with a special right of access under this section within 10 days of receiving the request for information."

2. On page 29, at line 45, after the words "is amended" add: "by amending subsections (a) and (b) and adding subsection (c)"

3. On page 30, between lines 10 and 11 add the following:

"(c) The officer for public records or the officer's agent shall treat each request for information uniformly without regard to the position or occupation of the person making the request or the person on whose behalf the request is made or because the individual is a member of the media."

4. On page 30, delete lines 11 through and including line 53 and substitute in lieu thereof the following:

"SECTION 15. Section 7, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), is amended to add subsection (c) and to amend subsections (a) and (b) as follows:

Sec. 7. ATTORNEY GENERAL OPINIONS. (a) If a governmental body receives a written request for information which it considers within one of the exceptions stated in Section 3 of this Act, but there has been no previous determination that it falls within one of the exceptions, the governmental body within a reasonable time, no later than ten calendar days, after receiving a written request must request a decision from the attorney general to determine whether the information is within that exception. If a decision is not so requested, the information shall be presumed to be public information.

(b) The attorney general shall forthwith render a decision, consistent with standards of due process, to determine whether the requested information is a public record or within one of the above stated exceptions. The specific information requested shall be supplied to the attorney general but shall not be disclosed to the public or the requesting party until a final determination has been made by the attorney general or, if suit is filed under the provisions of this Act, until a final decision has been made by the court with jurisdiction over the suit. In a suit filed under this Act, the court may order that the information at issue be discovered only pursuant to a protective order until a final determination is made. If the governmental body wishes to withhold information, it must submit written comments setting forth the reasons why the information should be withheld. Any member of the public may submit written comments setting forth the reasons why the information should or should not be released. The attorney general shall issue a written opinion based upon the determination made on the request.

(c) In cases in which a third party's privacy or property interests may be implicated, including but not limited to Subdivisions (1), (4), (10), and (14) of Subsection (a) of Section 3 of this Act, the governmental body may decline to release the information in order to request an attorney general's opinion. A person whose interests may be implicated or any other person may submit in writing to the attorney general the person's reasons for withholding or releasing the information. In such cases, the governmental body may but is not required to submit its reasons why the information should or should not be withheld.

SECTION 16. Section 8, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 8. WRIT OF MANDAMUS. (a) If a governmental body refuses to request an attorney general's decision as provided in this Act, or to supply public information or information which the attorney general has determined to be a public record, the person requesting the information or the attorney general may seek a writ of mandamus compelling the governmental body to make the information available for public inspection.

(b) In an action brought under this section or Subdivision (3) of Subsection (c) of Section 10, the court may assess costs of litigation and reasonable attorney's fees incurred by a plaintiff or defendant who substantially prevails. In exercising its discretion, the court shall consider whether the conduct of the governmental body had a reasonable basis in law and whether the litigation was brought in good faith.

SECTION 17. Section 9, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), is amended by amending Subsections (a), (b), (c), and (d) and by adding Subsections (g) and (h) to read as follows:

(a) The cost to any person requesting noncertified photographic reproductions of public records comprised of pages up to legal size shall not be excessive. The State Purchasing and General Services Commission [~~Board of Control~~] shall from time to time determine guidelines on the actual cost of standard size reproductions and shall periodically publish these cost figures for use by governmental bodies [~~agencies~~] in determining charges to be made pursuant to this Act. The cost of obtaining a standard or legal size photographic reproduction shall be in an amount that reasonably includes all costs related to reproducing the record, including costs of materials, labor, and overhead unless the request is for 50 pages or less of readily available information.

(b) Charges made for access to public records comprised in any form other than up to standard sized pages or in computer record banks, microfilm records, or other similar record keeping systems, shall be set upon consultation between the officer for public [~~custodian of the~~] records and the State Purchasing and General Services Commission [~~Board of Control~~], giving due consideration to the expenses involved in providing the public records making every effort to match the charges with the actual cost of providing the records. The costs of providing the record shall be in an amount that reasonably includes all costs related to providing the record, including costs of materials, labor, and overhead.

(c) It shall be the policy of all governmental bodies to provide suitable copies of all public records within a reasonable period of time after the date copies were requested. Every governmental body is hereby instructed to make reasonably efficient use of each page of public records so as not to cause excessive costs for the reproduction of public records.

(d) The charges for copies made in the district clerk's office and the county clerk's office may not be greater than the actual cost of the copies as provided in Subsections (a) and (b) of this section unless a certified record, the cost for which is set by law, is requested [~~shall be as otherwise provided by law~~]. (g) Public records shall be furnished without charge or at a reduced charge if the governmental body determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

(h) If a governmental body refuses or fails to provide copies of public records at the actual cost of reproducing the records as provided in Subsections (a) and (b) of this section, a person who overpays shall be entitled to recover three times the amount of the overcharge; provided, however, that the governmental body did not act in good faith in computing the costs.

SECTION 18. Subsections (b), (c), (d), and (e), Section 10, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) An officer for [~~A custodian of~~] public records, or his agent, commits an offense if, with criminal negligence, he or his agent fails or refuses to give access to, or to permit or provide copying of, public records to any person upon request as provided in this Act.

(c) It is an affirmative defense to prosecution under Subsection (b) of this section that officer for [~~custodian of~~] public records reasonably believed that the public records sought were not required to be made available to the public and that he:

(1) acted in reasonable reliance upon a court order or a written interpretation of this Act contained in an opinion of a court of record or of the attorney general issued under Section 7 of this Act;

(2) requested a decision from the attorney general in accordance with Section 7 of this Act, and that such decision is pending; or

(3) within 10 calendar [~~three working~~] days of the receipt of a decision by the attorney general that the information is public, filed a petition for a declaratory judgment, a writ of mandamus, or both against the attorney general, in a Travis County district court [~~cause of action~~] seeking relief from compliance with such decision of the attorney general, and that the petitions are [~~such cause is~~] pending.

(d) It is, further, an affirmative defense to prosecution under Subsection (b) of this section that a person or entity has, within 10 calendar days of the receipt by a governmental body of a decision by the attorney general that the information is public, filed a cause of action seeking relief from compliance with the decision of the attorney general, and that the cause is pending.

(e) It is an affirmative defense to prosecution under Subsection (b) of this section that the defendant is the agent of a custodian of public records and that the agent reasonably relied on the written instruction of the custodian of public records not to disclose the public records requested.

(f) [~~(c)~~] Any person who violates Section 10(a) or 10(b) of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be punished by confinement in the county jail not to exceed six (6) months or fined in an amount not to exceed $1,000, or by both such fine and confinement. A violation under this section constitutes official misconduct.

SECTION 19. Section 14, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), is amended by adding Subsection (f) to read as follows:

(f) This Act does not affect the scope of civil discovery under the Texas Rules of Civil Procedure. The exceptions from disclosure under this Act do not create new privileges from discovery."

5. Renumber subsequent sections accordingly.

The amendment was read and was adopted viva voce vote.

On motion of Senator Caperton and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 1285 ON THIRD READING

Senator Caperton, on behalf of Senator Parmer, moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 1285** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Parmer.

The bill was read third time and was passed viva voce vote.

CONFERENCE COMMITTEE ON SENATE BILL 417 GRANTED PERMISSION TO MEET

On motion of Senator Green and by unanimous consent, the Conference Committee on **S.B. 417** was granted permission to meet while the Senate was in session.

VOTE ON FINAL PASSAGE OF HOUSE BILL 646 RECONSIDERED

On motion of Senator McFarland and by unanimous consent, the vote by which **H.B. 646** was finally passed was reconsidered.

Question - Shall **H.B. 646** be finally passed?

Senator Glasgow offered the following amendment to Floor Amendment No. 1 to **H.B. 646** which was previously adopted:

Amend Floor Amendment No. 1 to **H.B. 646** by striking the following language on page 8, lines 21-24 "that the respondent had the ability to pay all or a portion of the court-ordered support on the dates support was due but was not paid or not timely paid"; and strike the following language on page 8, lines 26-27 "And, as applicable, must allege that the respondent has the present ability to comply with the order sought to be enforced"; and strike the following language on page 9, line 5, "that the respondent had the ability to comply with the court order at the time of the alleged violation, and, as to each violation for which punishment is sought"

By unanimous consent, the amendment was read and was adopted viva voce vote.

On motion of Senator McFarland and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was again finally passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Parmer.

SENATE RULE 7.22(b) SUSPENDED

On motion of Senator Santiesteban and by unanimous consent, Senate Rule 7.22(b) was suspended as it relates to the House amendments to **S.B. 2.**

SENATE BILL 2 WITH HOUSE AMENDMENTS

Senator Santiesteban called **S.B. 2** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment - Yost

Amend **S.B. 2** by striking all below the enacting clause and substituting in lieu thereof the following:

ARTICLE 1. FINDINGS AND PURPOSE

SECTION 1.01. (a) The legislature recognizes that there are many counties in which:

(1) the per capita income for the most recent three consecutive years for which statistics are available averaged 25 percent below the state average;

(2) the unemployment rate for the most recent three consecutive years for which statistics are available averaged 25 percent above the state average; and

(3) there are also located residential areas without any, or with seriously inadequate, water supply and sewer services.

(b) The legislature finds that:

(1) lack of adequate water supply and sewer services creates serious and unacceptable health hazards for the residents of areas described in Subsection (a) of this section;

(2) the resources of economically distressed areas are totally inadequate to meet minimal needs of the residents for adequate water supply and sewer services without federal, state, or private assistance;

(3) existing federal, state, and privately funded programs are not sufficient to address the needs of the residents for adequate and healthful water and sewer services at this time;

(4) unless the problems of inadequate water and sewer services in economically distressed areas are solved in the near future, the solutions will become far more expensive, far more dangerous to the public health and safety generally, and move further beyond the abilities of residents to solve without greater public assistance than current solutions will require;

(5) an agency is needed with the expertise, authority, and resources required to direct a coordinated program of financial assistance to meet requirements of the residential areas for adequate and healthful water supply and sewer services;

(6) by primarily using labor from within the political subdivisions obtaining financial assistance to build the needed water supply and sewer facilities, not only the problem created by lack of adequate water supply and sewer services but also the problem of chronic unemployment in those political subdivisions may be addressed;

(7) the alleviation of health hazards and the provision of adequate and healthful water supply and sewer services in these economically distressed areas of the state are public purposes for which public funds may lawfully be used; and

(8) by incorporating water conservation practices and water conserving equipment and fixtures into the provision of adequate water supply and sewer services for economically distressed areas, the residents of these areas will be better able to afford the long-term costs of providing these services and the water resources of the state will be conserved and protected.

SECTION 1.02. It is the purpose of this Act to:

(1) create a program for the public purposes of development and diversification of the state economy and the reduction of unemployment and underemployment in the state;

(2) make available through the Texas Water Development Board facility engineering and financial assistance to local governments for the purpose of providing adequate water supply and sewer services to existing economically distressed residential areas with inadequate water supply and sewer services;

(3) use the economically distressed areas assistance account, the water development fund, and the state water pollution control revolving fund to provide financial assistance to applicants for the purpose of providing adequate water supply and sewer services to existing economically distressed areas with inadequate water supply and sewer service; the funds may be used individually or in conjunction with one another in a manner to be determined on a case-by-case basis; it is also the purpose of this Act to allow the Texas Water Development Board maximum flexibility to structure financing of individual projects in a manner that will not

adversely affect the current or future integrity of the water development fund, the state water pollution control revolving fund, or any other financial assistance program of the board, yet will meet the needs for funding needed water supply and sewer service in economically distressed areas;

(4) approve the use in this effort of the proceeds of certain bond issues for which the Texas Water Development Board obtains constitutional authorization;

(5) provide authority to counties and municipalities qualifying for financial assistance under this Act to issue bonds and exercise necessary authority to provide water supply and sewer services and to adopt model rules by order of the commissioners court to assure provision of adequate water supply and sewer services consistent with public health requirements and to encourage municipalities to adopt rules to assure provision of adequate water supply and sewer services;

(6) to the extent feasible, use labor from the affected areas to build the needed water supply and sewer facilities;

(7) incorporate water conservation practices and water conserving equipment and fixtures into the provision of adequate water supply and sewer services to the residents of economically distressed areas; and

(8) authorize in connection with financial assistance the imposition of distressed areas water financing fees on undeveloped property if it is determined to be cost effective and if it will assist a political subdivision to more effectively retire any debt incurred in connection with that financial assistance.

ARTICLE 2. FINANCIAL ASSISTANCE FOR ECONOMICALLY DISTRESSED AREAS

SECTION 2.01. Section 15.001, Water Code, is amended by adding Subdivisions (10) and (11) to read as follows:

(10) "Federal agency" means any federal agency, including the United States Secretary of State, that may act or that is acting through the American Commissioner on the International Boundary and Water Commission, United States and Mexico.

(11) "Economically distressed area" means an area in which water supply or sewer services are inadequate to meet minimal needs of residential users as defined by board rules and in which financial resources are inadequate to provide water supply or sewer services that will satisfy those needs.

SECTION 2.02. Section 15.002, Water Code, is amended by adding Subsection (c) to read as follows:

(c) The legislature finds that serious health and sanitation problems face the citizens of this state from discharges of untreated and treated waste water into the Rio Grande. It is the intent of the legislature to provide a means of coordinating and financing the development of waste water treatment projects through cooperative efforts between this state, the United States, and the Republic of Mexico to improve the quality of water being discharged into the Rio Grande.

SECTION 2.03. Chapter 15, Water Code, is amended by adding Section 15.007 to read as follows:

Sec. 15.007. CONSIDERATIONS FOR CERTAIN FINANCIAL ASSISTANCE. (a) If financial assistance is provided under Subchapter C or J of this chapter, any waste treatment facility to be financed under the application must consider cost-effective methods of treatment such as rock reed, root zone, ponding, irrigation, or other nonconventional methods that may have been developed by the National Aeronautics and Space Administration or the Tennessee Valley Authority.

(b) Before granting an application for financial assistance under Subchapter C or J of this chapter, the board must find that any waste treatment facility to be financed under the application will consider cost-effective innovative methods of

treatment such as rock reed, root zone, ponding, irrigation, or other nonconventional methods that may have been developed by the National Aeronautics and Space Administration or the Tennessee Valley Authority.

SECTION 2.04. Section 15.102, Water Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) The loan fund may be used by the board to provide loans of financial assistance to political subdivisions, federal agencies, or both political subdivisions and federal agencies acting jointly for the construction, acquisition, improvement, or enlargement of projects involving water conservation, water development, or water quality enhancement, providing nonstructural and structural flood control, or drainage, project recreation lands and revenue-generating recreational improvements within any watershed, or providing recharge, chloride control, subsidence control, or desalinization as provided by legislative appropriations, this chapter, and the board rules.

(c) A political subdivision may enter into an agreement with a federal agency to submit a joint application for financial assistance under this subchapter. Before the board may grant financial assistance under a joint application, the board must find that the project is designed to produce effluent that will meet federal and state approved water quality standards.

(d) A grant or loan of financial assistance under a joint application by the federal government and a political subdivision may be made only for a project that is covered by an international contract or treaty to which the United States government is a party, and a grant or loan made under such a joint application is subject to the provisions, terms, and conditions of the international contract or treaty to which the United States government is a party.

SECTION 2.05. Subsections (a) and (b), Section 15.103, Water Code, are amended to read as follows:

(a) In an application to the board for financial assistance from the loan fund, the applicant shall include:

(1) the name of each ~~[the]~~ political subdivision or federal agency and its principal officers;

(2) a citation of the law under which each ~~[the]~~ political subdivision or federal agency operates and was created;

(3) the total cost of the project;

(4) the amount of state financial assistance requested;

(5) the plan for repaying the total cost of the project; and

(6) any other information the board requires in order to perform its duties and to protect the public interest.

(b) The board may not accept an application for a loan or grant of financial assistance from the loan fund unless it is submitted in affidavit form by the officials of the political subdivision or the chief administrator of the federal agency or both these officers and the chief administrator under a joint application. The board shall prescribe the affidavit form in its rules.

SECTION 2.06. Subsection (b), Section 15.104, Water Code, is amended to read as follows:

(b) If an applicant includes a proposal for a waste water treatment plant, the board may not deliver funds for the waste water treatment plant until the applicant has received a permit for construction and operation of the waste water treatment plant and approval of the plans and specifications from the commission. If the applicant proposes a waste treatment plant that is located outside of the jurisdiction of this state and that is not subject to the permitting authority of the commission, the board must review the plans and specifications in coordination with the commission and find that the waste water treatment plant is capable of producing effluent that will meet federal and state approved water quality standards.

SECTION 2.07. Section 15.105, Water Code, is amended to read as follows:

Sec. 15.105. CONSIDERATIONS IN PASSING ON APPLICATION. In passing on an application ~~[from a political subdivision]~~ for financial assistance from the loan fund, the board shall consider but is not limited to:

(1) the needs of the area to be served by the project and the benefit of the project to the area in relation to the needs of other areas requiring state assistance in any manner and the benefits of those projects to the other areas;

(2) the availability of revenue to the applicant ~~[political subdivision]~~ from all sources for the ultimate repayment of the cost of the project, including all interest;

(3) the relationship of the project to overall statewide needs;

(4) the ability of the applicant to finance the project without state assistance; and

(5) for applications for grants for economically distressed areas, the regulatory efforts by the county in which the project is located to control the construction of subdivisions that lack basic utility services.

SECTION 2.08. Subsections (a) and (c), Section 15.106, Water Code, are amended to read as follows:

(a) The board, by resolution, may approve an application for a loan if after considering the factors listed in Section 15.105 of this code and any other relevant factors, the board finds:

(1) that the public interest requires state participation in the project; and

(2) that in its opinion the revenue or taxes pledged by the political subdivision will be sufficient to meet all the obligations assumed by the political subdivision.

(c) The board may not require a program of water conservation to be adopted under Subsection (b) of this section if:

(1) an emergency exists as determined by the board;

(2) the amount of financial assistance to be provided is $500,000 or less; ~~[or]~~

(3) the applicant demonstrates and the board finds that the submission of such a program is not reasonably necessary to facilitate conservation or conservation measures; or

(4) the project consists of construction outside the jurisdiction of the State of Texas.

SECTION 2.09. The title of Section 15.110, Water Code, is amended to read as follows:

Sec. 15.110. REQUIREMENTS FOR POLITICAL SUBDIVISIONS AND FEDERAL AGENCIES.

SECTION 2.10. Section 15.110(b), Water Code, is amended to read as follows:

(b) Loans of financial assistance ~~[to a political subdivision]~~ under this subchapter shall be repaid to the board, and the payments made to the board ~~[by the political subdivision]~~ for these loans of financial assistance shall be made in compliance with terms and conditions established by the board.

SECTION 2.11. Section 15.114, Water Code, is amended to read as follows:

Sec. 15.114. ALTERATION OF PLANS. After approval of engineering plans, a political subdivision or federal agency shall not make any substantial or material alteration in the plans unless the executive administrator authorizes the alteration. For a waste water treatment plant or other facility required to have commission approval of plans and specifications, the commission must give its approval before a substantial or material alteration is made in those plans.

SECTION 2.12. Subchapter F, Chapter 15, Water Code, is amended by adding Section 15.407 to read as follows:

Sec. 15.407. FACILITY ENGINEERING IN ECONOMICALLY DISTRESSED AREAS. (a) In this section, "economically distressed area" and "political subdivision" have the meanings assigned by Section 16.341 of this code.

(b) The board may enter into contracts with a political subdivision to pay from the research and planning fund all or part of the cost of facility engineering in economically distressed areas, including preparation of plans and specifications.

(c) A political subdivision that desires money from the research and planning fund for facility engineering in an economically distressed area shall submit a written application to the board in the manner and form required by board rules.

(d) The application shall include:

(1) the name of the political subdivision;

(2) a citation to the laws under which the political subdivision was created and is operating;

(3) the amount requested from the board for facility engineering in an economically distressed area; and

(4) any other information required by the board in its rules or specifically requested by the board.

(e) After notice and hearing, the board may award the applicant all or part of the requested funds that are considered necessary by the board for the political subdivision to carry out adequate facility engineering in an economically distressed area.

(f) If the board grants an application under this section and awards funds for facility engineering in an economically distressed area, the board shall enter into a contract with the political subdivision that includes:

(1) a detailed statement of the purpose for which the money is to be used;

(2) the total amount of money to be paid from the research and planning fund under the contract; and

(3) any other terms and conditions required by board rules or agreed to by the contracting parties.

SECTION 2.13. Chapter 16, Water Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. ECONOMICALLY DISTRESSED AREAS

Sec. 16.341. DEFINITIONS. In this subchapter:

(1) "Affected county" means a county:

(A) that has a per capita income that averaged 25 percent below the state average for the most recent three consecutive years for which statistics are available and an unemployment rate that averaged 25 percent above the state average for the most recent three consecutive years for which statistics are available; or

(B) that is adjacent to an international border.

(2) "Economically distressed area" means an area in which:

(A) water supply or sewer services are inadequate to meet minimal needs of residential users as defined by board rules;

(B) financial resources are inadequate to provide water supply or sewer services that will satisfy those needs; and

(C) 80 percent of the dwellings covered by an application for funds or financial assistance were occupied on June 1, 1989.

(3) "Political subdivision" means an affected county or a municipality, a district created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, located in an affected county, or a nonprofit water supply corporation created and operating under Chapter 76, Acts of the 43rd

Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes), located in an affected county, that receives funds for facility engineering under Section 15.407 of this code or financial assistance under Subchapter K, Chapter 17, of this code or an economically distressed area for which financial assistance is received under Subchapter C, Chapter 15, of this code.

(4) "Sewer services" or "sewer facilities" means treatment works as defined by Section 17.001 of this code or individual, on-site, or cluster treatment systems such as septic tanks and includes drainage facilities and other improvements for proper functioning of septic tank systems.

Sec. 16.342. RULES. (a) The board shall adopt rules that are necessary to carry out the program provided by Subchapter K, Chapter 17, of this code and rules:

(1) incorporating existing minimum state standards and rules for water supply and sewer services established by the Texas Department of Health and the Texas Water Commission; and

(2) requiring compliance with existing rules of any state agency relating to septic tanks and other waste disposal systems.

(b) In developing rules under this section, the board shall examine other existing laws relating to counties and municipalities.

Sec. 16.343. MINIMUM STATE STANDARDS AND MODEL POLITICAL SUBDIVISION RULES. (a) The Texas Water Commission and the Texas Department of Health shall, in conjunction with the board, prepare model rules to assure compliance with Chapters 212 and 232, Local Government Code, and to assure that minimum standards for safe and sanitary water supply and sewer services in residential areas, including rules of any state agency relating to septic tanks and other waste disposal systems, are met.

(b) The model rules must assure that adequate drinking water is available to the residential areas in accordance with Chapter 178, Acts of the 49th Legislature, 1945 (Article 4477-1, Vernon's Texas Civil Statutes), and the Rules and Regulations for Public Water Systems and the Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems adopted by the Texas Board of Health and other law and rules applicable to drinking water.

(c) The model rules must assure that adequate sewer facilities are available to the residential areas through either septic tanks or an organized sewage disposal system that is a publicly or privately owned system for the collection, treatment, and disposal of sewage operated in accordance with the terms and conditions of a valid waste discharge permit issued by the Texas Water Commission or private sewage facilities in accordance with Article 4477-7e, Revised Statutes, and the Construction Standards for On-Site Sewerage Facilities adopted by the Texas Department of Health and other law and rules applicable to sewage facilities.

(d) The model rules must prohibit the establishment of residential developments with tracts of two acres or less in the political subdivision without adequate water supply and sewer services. Also, the model rules must prohibit more than one dwelling to be located on each tract.

(e) The model rules must provide criteria governing the distance that structures must be set back from roads or property lines to ensure proper operation of water supply and sewer services and to reduce the risk of fire hazards.

(f) Before filing an application for funds for facility engineering under Section 15.407 of this code or financial assistance under Subchapter K, Chapter 17, of this code, a political subdivision must adopt model rules developed by the board under this section or, in the case of a district or nonprofit water supply corporation, must be located in a city or county that has adopted such rules.

Sec. 16.344. OVERSIGHT. (a) The board shall monitor the performance of a political subdivision that receives financial assistance under Subchapter K, Chapter 17, of this code to ensure that the project approved in the application and

plans is constructed in the manner described in the application and plans and that the terms and conditions that govern the financial assistance are satisfied.

(b) A political subdivision that receives financial assistance shall submit to the board monthly, or as often as otherwise required by board rules, an account of expenditures for the project during the preceding month or other required period.

(c) A political subdivision that receives financial assistance shall furnish at the board's request additional information necessary for the board to monitor compliance with the approved application and plan for financial assistance and the terms and conditions of the financial assistance.

Sec. 16.345. AUTHORITY TO PARTICIPATE IN PROGRAM. (a) A political subdivision may exercise any authority necessary to participate in a program under Section 15.407 of this code or Subchapter K, Chapter 17, of this code and carry out the terms and conditions under which the funds or the financial assistance is provided.

(b) A political subdivision other than a nonprofit water supply corporation eligible for financial assistance under Subchapter K, Chapter 17, of this code may issue bonds payable from and secured by a pledge of the revenues derived or to be derived from the operation of water supply or sewer service systems for the purpose of acquiring, constructing, improving, extending, or repairing water supply or sewer facilities. The bonds shall be issued in accordance with, and a political subdivision may exercise the powers granted by Articles 1111-1118, Revised Statutes, excluding Article 1113a, Revised Statutes, by the Bond Procedures Act of 1981 (Article 717k-6, Vernon's Texas Civil Statutes), by Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes), and by other laws of the state.

Sec. 16.346. EXAMINATION OF ABILITY OF A DISTRICT TO PROVIDE SERVICES AND FINANCING. (a) In connection with an application under Subchapter K, Chapter 17, of this code, the board may consider and make any necessary investigations and inquiries as to the feasibility of creating a conservation and reclamation district under Article XVI, Section 59, of the Texas Constitution to provide, in lieu of financial assistance under the application, water supply and sewer services in the area covered by the application through issuance of district bonds to be sold on the regular bond market.

(b) In carrying out its authority under this section, the board may require the applicant to provide necessary information to assist the board in making a determination as to the feasibility of creating a district to provide the services and financing covered by the application.

Sec. 16.347. REQUIREMENT OF IMPOSITION OF DISTRESSED AREAS WATER FINANCING FEE. (a) In this section:

(1) "Distressed areas water financing fee" means a fee imposed by a political subdivision on undeveloped property.

(2) "Undeveloped property" means a tract, lot, or reserve in an area in a political subdivision to be served by water supply or sewer services financed in whole or in part with financial assistance from the board under Subchapter K, Chapter 17, of this code for which a plat has been filed under Subchapter A, Chapter 212, or Chapter 232, Local Government Code.

(b) The board may require, as a condition for granting an application for financial assistance under Subchapter K, Chapter 17, of this code to a political subdivision in which a plat is required to be filed under Subchapter A, Chapter 212, or Chapter 232, Local Government Code, that the applicant impose a distressed areas water financing fee on undeveloped property in the political subdivision if the board determines that imposition of the fee would:

(1) reduce the amount of any financial assistance that the board may provide to accomplish the purposes of the political subdivision under the application; or

(2) assist the political subdivision to more effectively retire any debt undertaken by the political subdivision in connection with financial assistance made available by the board to the political subdivision.

Sec. 16.348. SETTING OF FEE BY POLITICAL SUBDIVISION; LIEN; DELINQUENT FEES. (a) Before a political subdivision may set the amount of or impose a fee under Section 16.347 of this code, the political subdivision shall hold a hearing on the matter.

(b) Notice of the hearing shall be published in a newspaper of general circulation in the political subdivision once a week for two consecutive weeks. The first publication must occur not later than the 30th day before the date of the hearing. The political subdivision shall send, not later than the 30th day before the date of the hearing, notice of the hearing by certified mail, return receipt requested, to each owner of undeveloped property in the political subdivision. The tax assessor and collector of the political subdivision shall certify to the political subdivision the names of the persons owning undeveloped land in the political subdivision as reflected by the most recent certified tax roll of the political subdivision. Notice of the hearing also must be provided by certified mail, return receipt requested, to each mortgagee of record that has submitted a written request to be informed of any hearings. To be effective, the written request must be received by the political subdivision not later than the 60th day before the date of the hearing. The written request for notice must include the name and address of the mortgagee, the name of the property owner in the political subdivision, and a brief property description.

(c) A distressed areas water financing fee imposed under Section 16.347 of this code is a personal obligation of the person owning the undeveloped property on January 1 of the year for which the fee is assessed. A person is not relieved of the obligation on transfer of title to the property. On January 1 of each year, a lien attaches to undeveloped property to secure payment of any fee imposed under this section and the interest, if any, on the fee. The lien has the same priority as a lien for taxes of the political subdivision.

(d) If a distressed areas water financing fee imposed under Section 16.347 of this code is not paid in a timely manner, the political subdivision may file suit to foreclose the lien securing payment of the fee and interest or to enforce the personal obligation for the fee and interest, or both. The political subdivision may recover, in addition to the fee and interest, reasonable costs, including attorney's fees, incurred by the political subdivision in enforcing the lien or obligation not to exceed 15 percent of the delinquent fee and interest. A suit authorized by this subsection must be filed not later than the fourth anniversary of the date the fee became due. A fee delinquent for more than four years and interest on the fee are considered paid unless a suit is filed before the expiration of the four-year period.

(e) A person owning undeveloped property for which a distressed areas water financing fee is assessed under this section may not construct or add improvements to the property if the fee is delinquent.

Sec. 16.349. FEES. (a) A political subdivision that receives financial assistance may charge persons in an economically distressed area in which water supply and sewer services are furnished an amount for those services that is not less than the amount provided in the application for financial assistance.

(b) The amount charged under Subsection (a) of this section may be equal to or less than the rates paid for water supply and sewer services by residents of the political subdivision and without regard to whether the economically distressed area is located in the boundaries of the political subdivision.

Sec. 16.350. ELIGIBLE COUNTIES AND MUNICIPALITIES TO ADOPT RULES. (a) In order to participate in this program, the model rules developed under Section 16.343 of this code must be adopted and enforced by a county or municipality that applies for or receives funds or financial assistance under Section

15.407 of this code or Subchapter K, Chapter 17, of this code. The county or municipality by order or ordinance shall adopt and enter the model rules in the minutes of a meeting of its governing body and shall publish notice of that action in a newspaper with general circulation in the county or municipality.

(b) The county commissioners or the municipal governing body shall adopt the rules in the form of model rules developed under Section 16.343 of this code.

(c) Rules adopted by the commissioners court under this section must apply to all the unincorporated area of the county.

(d) A municipality may adopt rules relating to water supply and sewer services within its extraterritorial jurisdiction that are more strict than those adopted by the county under Section 16.343 of this code.

Sec. 16.351. CONTRACT PREFERENCE. A political subdivision that receives financial assistance under Subchapter K, Chapter 17, of this code shall give preference in the award of political subdivision contracts to acquire, construct, extend, or provide water supply and sewer services or facilities to a bidder that agrees to use labor from inside the political subdivision to the extent possible.

Sec. 16.352. ENFORCEMENT OF RULES. (a) A person who violates a rule adopted by a county or municipality pursuant to Section 16.343 of this code is subject to a civil penalty of not less than $50 nor more than $1,000 for each violation and for each day of a continuing violation, but not in excess of $5,000 per day.

(b) A person commits an offense if the person knowingly or intentionally violates a rule adopted pursuant to Section 16.343 of this code by a county or a municipality.

(c) An offense under Subsection (b) of this section is a Class B misdemeanor.

Sec. 16.353. INJUNCTION. In addition to other remedies, the attorney general, the county or district attorney of the county in which the violation occurred, or other local officials are authorized to apply to the district court for and the court in its discretion may grant the state or political subdivision, without bond or other undertaking, any injunction that the facts may warrant including temporary restraining orders, temporary injunctions after notice and hearing, and permanent injunctions enjoining a violation of the rules.

Sec. 16.354. ENFORCEMENT BY ATTORNEY GENERAL. In addition to enforcement by a political subdivision, the attorney general may bring suit to enforce a rule adopted under Section 16.350 of this code, to recover the penalty provided by Section 16.352 of this code, to obtain injunctive relief to prevent the violation or continued violation of a political subdivision's rules, or to enforce the rules, recover the criminal penalty, and obtain injunctive relief.

Sec. 16.355. AUTHORITY OVER FACILITIES. A political subdivision may construct, contract for construction, operate, or contract with any person for operation of any water supply or sewer services or facilities provided by the political subdivision with financial assistance obtained under Subchapter K, Chapter 17, of this code.

SECTION 2.14. Subchapter B, Chapter 17, Water Code, is amended by adding Sections 17.0111 and 17.0112 to read as follows:

Sec. 17.0111. DEDICATION OF CERTAIN BONDS. Twenty percent of the amount of bonds authorized by Article III, Section 49-d-7, of the Texas Constitution for the purposes provided by Article III, Sections 49-c and 49-d-1, of the Texas Constitution is dedicated to the purposes provided by Subchapter K of this chapter.

Sec. 17.0112. AUTHORIZATION OF CERTAIN BONDS FOR FINANCIAL ASSISTANCE. (a) The board may issue not more than $25 million in bonds dedicated under Section 17.0111 of this code during a calendar year to provide financial assistance for water supply and sewer services as provided under Subchapter K of this chapter.

(b) On request of the board, the bond review board, by resolution, may waive during any state fiscal year the limit provided by Subsection (a) of this section and authorize the board to issue an additional amount of bonds if the bond review board finds that the amount of bonds authorized for that state fiscal year has been exhausted or there is not a sufficient amount of bonds to meet needs of the program during the state fiscal year and that the public health and safety require immediate authorization of additional bonds. Before the bond review board adopts such a resolution, it shall give notice and hold a hearing to determine whether the limits should be waived and the authorization given.

SECTION 2.15. Section 17.072, Water Code, is amended by amending Subsections (b), (c), and (d) and adding Subsections (j) and (k) to read as follows:

(b) Except as provided by Subsections (f), [~~and~~] (h), (j), and (k) of this section, proceeds from the sale of water development bonds, together with all proceeds (excluding accrued interest which shall be deposited into the interest and sinking fund) from the sale, refunding, or prepayment of political subdivision bonds acquired in carrying out the purposes set out in Article III, Sections 49-c, 49-d, 49-d-2, [~~and~~] 49-d-6, and 49-d-7, of the Texas Constitution, shall be deposited in a special account in the development fund designated "water supply account," and other money for deposit therein as provided in this chapter shall be credited to the water supply account.

(c) The water supply account may be used for any water supply project and in any manner consistent with the provisions of the constitution, including retail distribution [~~but the development fund may not be used for retail distribution or for transportation of water solely to retail purchasers~~].

(d) Except as provided by Subsections (j) and (k) of this section, [~~All~~] proceeds from the sale of water quality enhancement bonds, together with all proceeds (excluding accrued interest which shall be deposited into the interest and sinking fund) from the sale, refunding, or prepayment of political subdivision bonds acquired in carrying out the purposes in Article III, Section 49-d-1, of the Texas Constitution, shall be deposited in a special account in the development fund designated "water quality enhancement account," and other money for deposit therein as provided in this chapter shall be credited to the water quality enhancement account.

(j) Proceeds from the sale of bonds pursuant to Section 17.0111 of this code, together with proceeds, other than accrued interest, from the sale, refunding, or prepayment of political subdivision bonds acquired in carrying out the purposes provided by Subchapter K of this chapter, shall be deposited in a special account in the development fund designated as the economically distressed areas account, with other money for deposit in that account as provided by this chapter, the General Appropriations Act, or other law of this state. Within the economically distressed areas account, separate accounts may be created for bonds issued for purposes of Article III, Section 49-c, of the Texas Constitution, and bonds issued for purposes of Article III, Section 49-d-1, of the Texas Constitution.

(k) The economically distressed areas account may be used as provided by Subchapter K of this chapter in a manner that is consistent with the constitution and other law.

SECTION 2.16. Subchapter C, Chapter 17, Water Code, is amended by amending Sections 17.073 and 17.074 and by adding Section 17.0741 to read as follows:

Sec. 17.073. WATER DEVELOPMENT AND ECONOMICALLY DISTRESSED AREAS CLEARANCE FUNDS [~~FUND~~]. (a) The Texas Water Development Clearance Fund, referred to as the "clearance fund," is a special fund in the State Treasury. Transfers shall be made from this fund as provided by this subchapter.

(b) The Economically Distressed Areas Clearance Fund is a special fund in the State Treasury. Transfers shall be made from this fund as provided by this subchapter.

Sec. 17.074. INTEREST AND SINKING FUND. The Texas Water Development Bonds Interest and Sinking Fund, referred to as the "interest and sinking fund," is a special fund in the State Treasury into which there shall be paid, from sources specified in this chapter, amounts other than amounts required to be paid into the economically distressed areas interest and sinking fund sufficient to:

(1) pay the interest coming due on all outstanding bonds other than bonds covered by Sections 17.0111 and 17.0112 of this code during the ensuing fiscal year;

(2) pay the principal on all bonds other than bonds covered by Sections 17.0111 and 17.0112 of this code that mature during the ensuing fiscal year, plus collection charges and exchanges on the bonds; and

(3) establish a reserve equal to the average annual principal and interest requirements on all outstanding bonds other than bonds covered by Sections 17.0111 and 17.0112 of this code.

Sec. 17.0741. ECONOMICALLY DISTRESSED AREAS INTEREST AND SINKING FUND. (a) The Economically Distressed Areas Interest and Sinking Fund is a special fund in the State Treasury to be used to pay debt service on bonds issued for the purposes provided by Subchapter K of this chapter. The fund is composed of:

(1) proceeds from the sale of political subdivision bonds to the Texas Water Resources Finance Authority in amounts provided by the General Appropriations Act;

(2) money provided by the federal government, the state, or local governmental entities and by private entities for the purpose of paying debt service on bonds issued for purposes provided by Subchapter K of this chapter; and

(3) any other money deposited to the credit of the fund.

(b) Money shall be paid into the economically distressed areas interest and sinking fund from sources specified in Subsection (a) of this section in amounts sufficient to:

(1) pay the interest coming due on all outstanding bonds during the ensuing fiscal year;

(2) pay the principal on all bonds that mature during the ensuing fiscal year, plus collection charges and exchanges on bonds; and

(3) establish a reserve equal to the average annual principal and interest requirements on all outstanding bonds.

SECTION 2.17. Chapter 17, Water Code, is amended by amending Sections 17.077, 17.078, 17.079, 17.080, 17.081, 17.082, 17.083, and 17.085 and adding Section 17.0791 to read as follows:

Sec. 17.077. CREDITS TO CLEARANCE FUNDS [~~FUND~~]. (a) Except as provided by Subsection (b) of this section, and except [~~Except~~] for proceeds from the sale of bonds and proceeds from the sale, refunding, or prepayment, of political subdivision bonds acquired in carrying out the purposes in Article III, Sections 49-c, 49-d, 49-d-1, 49-d-2, and 49-d-6, of the Texas Constitution, and the proceeds from the sale, refinancing, or other liquidation of the investments made under Section 17.083 of this code which shall be deposited in the fund that provided the money for the investment, all money received by the board in any fiscal year, including all amounts received as repayment of loans to political subdivisions and interest on those loans, shall be credited to the clearance fund. Money in the clearance fund may be transferred at any time to the interest and sinking fund until the reserve in that fund is equal to the average annual principal and interest requirements on all outstanding bonds.

(b) Any amounts received as repayment of financial assistance made to a political subdivision under Subchapter K of this chapter, and interest on that financial assistance, shall be deposited to the economically distressed areas clearance fund. Money in the economically distressed areas clearance fund may be transferred at any time to the economically distressed areas interest and sinking fund until the reserve in that fund is equal to the average annual principal and interest requirements on all outstanding bonds.

Sec. 17.078. TRANSFERS AT END OF FISCAL YEAR. (a) Not later than 15 days after the end of each fiscal year, any money credited to the clearance fund at the end of the fiscal year shall be transferred to the other special funds as prescribed by Sections 17.079 through 17.082 of this code.

(b) Not later than 15 days after the end of each fiscal year, any money credited to the economically distressed areas clearance fund shall be transferred to the other special funds as prescribed by Sections 17.0791 through 17.082 of this code.

Sec. 17.079. TRANSFERS TO INTEREST AND SINKING FUND. (a) The board shall determine:

(1) the amount of interest coming due on all bonds outstanding, except for those dedicated pursuant to Section 17.0111 of this code;

(2) the amount of principal of bonds maturing and becoming payable during the fiscal year, except for those bonds dedicated pursuant to Section 17.0111 of this code; and

(3) the average annual principal and interest requirements on all outstanding bonds, except for those bonds dedicated pursuant to Section 17.0111 of this code.

(b) The comptroller shall transfer to the interest and sinking fund, after taking into account any money and securities on deposit in the interest and sinking fund, an amount necessary to pay:

(1) all principal and interest maturing on the bonds, except for those bonds dedicated pursuant to Section 17.0111 of this code, during the fiscal year;

(2) all collection charges and exchanges on the bonds in Subsection (b)(1) of this section; and

(3) the money sufficient to establish and maintain an additional reserve equal to the average annual principal and interest requirements on all outstanding bonds, except for those bonds dedicated pursuant to Section 17.0111 of this code.

Sec. 17.0791. TRANSFERS TO ECONOMICALLY DISTRESSED AREAS INTEREST AND SINKING FUND. (a) The board shall determine:

(1) the amount of interest coming due on all bonds outstanding dedicated pursuant to Section 17.0111 of this code;

(2) the amount of principal of those bonds maturing and becoming payable during the fiscal year; and

(3) the average annual principal and interest requirements on all outstanding bonds.

(b) The comptroller shall transfer to the economically distressed areas interest and sinking fund, after taking into account any money and securities on deposit in the economically distressed areas interest and sinking fund, an amount necessary to pay:

(1) all principal and interest maturing on the bonds dedicated pursuant to Section 17.0111 of this code during the fiscal year;

(2) all collection charges and exchanges on those bonds; and

(3) the money sufficient to establish and maintain an additional reserve equal to the average annual principal and interest requirements on all outstanding bonds.

Sec. 17.080. ADDITIONAL FUNDS FOR PAYMENT OF BONDS. (a) If the amount transferred from the clearance fund plus the money and securities in the interest and sinking fund are insufficient to pay the interest coming due and the principal maturing on the bonds during the fiscal year, then after the transfer to the interest and sinking fund of as much money as is available in the clearance fund, the State Treasurer shall transfer out of the first money coming into the treasury, not otherwise appropriated by the constitution, the amount required to pay principal and interest on the bonds during the fiscal year, except for those bonds dedicated pursuant to Section 17.0111 of this code.

(b) If the amount transferred from the economically distressed areas clearance fund plus the money and securities in the economically distressed areas interest and sinking fund are insufficient to pay the interest coming due and the principal maturing on the bonds dedicated pursuant to Section 17.0111 of this code during the fiscal year, then after the transfer to the economically distressed areas interest and sinking fund of as much money as is available in the economically distressed areas clearance fund, the State Treasurer shall transfer out of the first money coming into the treasury, not otherwise appropriated by the constitution, the amount required to pay principal and interest on the bonds during the fiscal year.

Sec. 17.081. TRANSFERS TO ADMINISTRATIVE FUND. If money remains in the clearance fund or the economically distressed areas clearance fund after making the transfers provided in Section 17.079 of this code, then to the extent possible the comptroller shall transfer to the administrative fund an amount sufficient to cover the legislative appropriation for administrative expenses of the board for the fiscal year.

Sec. 17.082. TRANSFERS TO DEVELOPMENT FUND. If money remains in the clearance fund or the economically distressed areas clearance fund after making the transfers provided in Sections 17.079, 17.0791, and 17.081 of this code, the comptroller shall transfer the balance to the appropriate account in the development fund at the end of each fiscal year to be used for any purpose for which proceeds of bonds in such account may be used.

Sec. 17.083. INVESTMENT OF RESERVE MONEY. The board may invest any money credited to the development fund and not immediately required for its intended use and money in the interest and sinking fund and in the economically distressed areas interest and sinking fund, including the reserve portions [~~portion~~] of the interest and sinking fund and the economically distressed areas interest and sinking fund, in investments authorized by law for state deposits[~~; in:~~

[~~(1) direct obligations of the United States;~~

[~~(2) other obligations unconditionally guaranteed by the United States;~~

[~~(3) obligations of the State of Texas; and~~

[~~(4) obligations of counties, cities, and other political subdivisions of any state of the United States, except bonds issued by a political subdivision to finance a project or treatment works described in this chapter~~].

Sec. 17.085. SALE OF SECURITIES. All of the bonds and obligations owned in the interest and sinking fund, in the economically distressed areas interest and sinking fund, or in the development fund are defined as securities. The board may sell securities owned in the interest and sinking fund, in the economically distressed areas interest and sinking fund, or in any account in the development fund at the governing market price.

SECTION 2.18. Sections 17.172, 17.173, 17.179, 17.181, and 17.183, Water Code, are amended to read as follows:

Sec. 17.172. APPLICABILITY. This subchapter applies to financial assistance made available from the water supply account, the water quality

enhancement account, [~~and~~] the flood control account, and the economically distressed areas account under Subchapters D, F, [~~and~~] G, and K of this chapter.

Sec. 17.173. METHOD OF FINANCIAL ASSISTANCE. The board may provide financial assistance by using money in the water supply account, the water quality enhancement account, [~~and~~] the flood control account, and the economically distressed areas account to purchase bonds or other obligations issued by the political subdivision to finance the project. The board may purchase bonds or other obligations that are secondary or subordinate to other bonds or obligations issued by the political subdivision, including outstanding prior lien bonds previously issued by the political subdivision when this will avoid or reduce the necessity for issuing junior lien bonds for subsequent sale to the board. The board may purchase refunding bonds of a political subdivision issued for the purpose of refunding bonds issued for the construction of any projects described in this chapter.

Sec. 17.179. SECURITY FOR BONDS. (a) Except as provided by Subsection (c) of this section, bonds [~~Bonds~~] purchased by the board shall be supported by:

(1) all or part of the net revenue from the operation of the project;

(2) taxes levied by the political subdivision for the purpose; or

(3) a combination of taxes and net revenue, and revenue from other available sources.

(b) The board may require that the bonds be supported both by taxes and by net revenue from the operation of the project in any ratio the board considers necessary to fully secure the investment. The board shall establish other conditions and requirements it considers to be consistent with sound investment practices and in the public interest.

(c) Bonds purchased by the board under Subchapter K of this chapter may be additionally supported by money provided to the political subdivision by the federal or state government and by private donations.

Sec. 17.181. SALE OF BONDS BY BOARD. The board may sell or dispose of bonds purchased with money in the water supply account, the water quality enhancement account, [~~or~~] the flood control account, or the economically distressed areas account.

Sec. 17.183. CONSTRUCTION CONTRACT REQUIREMENTS. The governing body of each political subdivision receiving financial assistance from the board shall require in all contracts for the construction of a project:

(1) that each bidder furnish a bid guarantee equivalent to five percent of the bid price;

(2) that each contractor awarded a construction contract furnish performance and payment bonds:

(A) the performance bond shall include without limitation guarantees that work done under the contract will be completed and performed according to approved plans and specifications and in accordance with sound construction principles and practices; and

(B) the performance and payment bonds shall be in a penal sum of not less than 100 percent of the contract price and remain in effect for one year beyond the date of approval by the engineer of the political subdivision; and

(3) that payment be made in partial payments as the work progresses;

(4) that each partial payment shall not exceed 90 percent of the amount due at the time of the payment as shown by the engineer of the project, but, if the project is substantially complete, a partial release of the 10 percent retainage may be made by the political subdivision with approval of the executive administrator;

(5) that payment of the retainage remaining due upon completion of the contract shall be made only after:

(A) approval by the engineer for the political subdivision as required under the bond proceedings;

(B) approval by the governing body of the political subdivision by a resolution or other formal action; and

(C) certification by the development fund manager in accordance with the rules of the board that the work to be done under the contract has been completed and performed in a satisfactory manner and in accordance with sound engineering principles and practices; [~~and~~]

(6) that no valid approval may be granted unless the work done under the contract has been completed and performed in a satisfactory manner according to approved plans and specifications; and

(7) that, if a political subdivision receiving financial assistance under Subchapter K of this chapter, labor from inside the political subdivision be used to the extent possible.

SECTION 2.19. Chapter 17, Water Code, is amended by adding Section 17.189 to read as follows:

Sec. 17.189. CONSIDERATIONS FOR CERTAIN FINANCIAL ASSISTANCE. (a) If financial assistance is provided under Subchapter F, I, or K of this chapter, any treatment works to be financed under the application must consider cost-effective innovative methods of treatment such as rock reed, root zone, ponding, irrigation, or other nonconventional methods that may have been developed by the National Aeronautics and Space Administration or the Tennessee Valley Authority.

(b) Before granting an application for financial assistance under Subchapter F, I, or K of this chapter that includes financing for treatment works, the board must find that any treatment works to be financed under the application will consider cost-effective innovative methods of treatment such as rock reed, root zone, ponding, irrigation, or other nonconventional methods that may have been developed by the National Aeronautics and Space Administration or the Tennessee Valley Authority.

SECTION 2.20. Subsection (c), Section 17.853, Water Code, is amended to read as follows:

(c) The board may use the fund only:

(1) to provide state matching funds for federal funds provided to the state water pollution control revolving fund;

(2) to provide financial assistance from the proceeds of taxable bond issues to water supply corporations organized under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes), and other participants;

(3) to provide financial assistance to participants for the construction of water supply projects and treatment works that involve the distribution of water and wastewater to retail customers; [~~and~~]

(4) to provide financial assistance for an interim construction period to participants for projects for which the board will provide long-term financing through the water development fund; and

(5) to provide financial assistance for water supply and sewer service projects in economically distressed areas as provided by Subchapter K of this code to the extent the board can make that assistance without adversely affecting the current or future integrity of the fund or of any other financial assistance program of the board.

SECTION 2.21. Chapter 17, Water Code, is amended by adding Subchapter K to read as follows:

SUBCHAPTER K. ASSISTANCE TO ECONOMICALLY DISTRESSED AREAS FOR WATER SUPPLY AND SEWER SERVICE PROJECTS

Sec. 17.881. DEFINITIONS. In this subchapter:

(1) "Economically distressed area" means an area in which:

(A) water supply or sewer services are inadequate to meet minimal needs of residential users as defined by board rules;

(B) financial resources are inadequate to provide water supply or sewer services that will satisfy those needs; and

(C) 80 percent of the dwellings to be served by financial assistance under this subchapter were occupied on June 1, 1989.

(2) "Political subdivision" means a county, municipality, a nonprofit water supply corporation created and operating under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes), or district created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution.

(3) "Water conservation" means those practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.

(4) "Sewer services" and "sewer facilities" mean treatment works or individual, on-site, or cluster treatment systems such as septic tanks, and includes drainage facilities and other improvements for proper functioning of the sewer services and other facilities.

Sec. 17.882. FINANCIAL ASSISTANCE. The economically distressed areas account may be used by the board to provide financial assistance to political subdivisions for the construction, acquisition, or improvement of water supply and sewer services.

Sec. 17.883. COUNTY ELIGIBILITY FOR FINANCIAL ASSISTANCE. (a) Except as provided by Subsection (b) of this section, to be eligible for financial assistance under this subchapter a county must have:

(1) a per capita income that averaged 25 percent below the state average for the most recent three consecutive years for which statistics are available;

(2) an unemployment rate that averaged 25 percent above the state average for the most recent three consecutive years for which statistics are available; and

(3) adopted the model rules developed under Section 16.343 of this code.

(b) A county that is located adjacent to an international border is eligible to obtain financial assistance under this subchapter if the county has adopted the model rules developed under Section 16.343 of this code.

Sec. 17.884. MUNICIPALITY ELIGIBLE FOR FINANCIAL ASSISTANCE. A municipality that is located in a county that is eligible for financial assistance under Section 17.883 of this code is eligible for financial assistance under this subchapter if the municipality adopts the model rules developed under Section 16.343 of this code.

Sec. 17.885. DISTRICTS AND NONPROFIT WATER SUPPLY CORPORATIONS ELIGIBLE FOR FINANCIAL ASSISTANCE. A district or nonprofit water supply corporation is eligible to receive financial assistance under this subchapter if:

(1) application is made to provide services to residents of an economically distressed area located in an eligible county or municipality; and

(2) the governing bodies of each eligible county and municipality in which the service area is located do not intend to apply for financial assistance for

the same project for the same area and approve by resolution the district submitting an application for financial assistance.

Sec. 17.886. APPLICANTS' CONTINUED ELIGIBILITY. If, after submission of a financial assistance application, a county has an increase in average per capita income or decrease in unemployment rate average so that the county no longer meets the criteria in this subchapter, the political subdivision that submits the application continues to be eligible for the financial assistance, and the board shall process the application and, if the application is approved, shall provide financial assistance to the political subdivision to complete the project.

Sec. 17.887. APPLICATION FOR FINANCIAL ASSISTANCE. (a) A political subdivision may apply to the board for financial assistance under this subchapter by submitting an application together with a plan for providing water supply and sewer services to an economically distressed area for which the financial assistance is to be used.

(b) The application and plan must:

(1) comply with board requirements;

(2) describe in detail the method for delivering water supply and sewer services and the persons to whom the services will be provided;

(3) describe the method for complying with minimum state standards for water supply and sewer services adopted by the board under Section 16.342 of this code;

(4) include a budget that estimates the total cost of providing water supply and sewer services to the economically distressed area and a proposed schedule and method for repayment of financial assistance provided by the board;

(5) describe existing water supply and sewer facilities located in the economically distressed area and include with the description:

(A) the county map required by Section 6A, Article 4477-7e, Revised Statutes, as added by Chapter 406, Acts of the 70th Legislature, Regular Session, 1987; or

(B) a document prepared and certified by an engineer registered to practice in this state describing the plan for providing water supply and sewer services to the economically distressed area;

(6) provide proof that the political subdivision has adopted the model rules developed under Section 16.343 of this code;

(7) include information on the ability of potential customers to pay for the services provided by the project including composite data prepared by the applicant from surveys of those potential customers covering income, family size, personal expenses, employment status, and other information required by board rule;

(8) include an estimate of the per household cost of providing the services contemplated by the project with supporting data;

(9) describe the procedures to be used to collect money from residents who use the proposed water supply and sewer services including procedures for collection of delinquent accounts;

(10) include a requirement that a contractor who agrees to acquire, construct, extend, or provide water supply and sewer services executes a performance bond in the amount of 100 percent of the contract price;

(11) contain an agreement to comply with applicable procurement procedures in contract awards for water supply and sewer services;

(12) if located in the service area of a retail public utility or public utility that has a certificate of public convenience and necessity under Chapter 13 of this code, include a document in the form of an affidavit signed by the chief executive officer of the utility, which shall cooperate with the political subdivision, stating that the utility does not object to the construction and operation of the services and facilities in its service area;

(13) include a map of the economically distressed area together with supporting information relating to dwellings in the area; and

(14) describe in detail the methods for incorporating water conservation into the provision of water and sewer services to the economically distressed area.

(c) If an applicant is a district or nonprofit water supply corporation, the applicant must include with the application proof that the appropriate county and municipalities have given their consent.

(d) In an application to the board for financial assistance for a water supply project or for sewer services, the applicant shall include:

(1) the name of the political subdivision and its principal officers;

(2) a citation of the law under which the political subdivision operates and was created;

(3) a description of the water supply project or the sewer services for which the financial assistance will be used;

(4) the estimated total cost of the water supply project or sewer services construction;

(5) the amount of state financial assistance requested;

(6) the plan for repaying the financial assistance provided for the water supply project or sewer services; and

(7) any other information the board requires.

Sec. 17.888. FINDINGS REGARDING PERMITS. (a) The board may not deliver funds pursuant to an application for financial assistance until the executive administrator makes a written finding:

(1) that an applicant proposing surface-water development has the necessary water right authorizing it to appropriate and use the water that the water supply project will provide; or

(2) that an applicant proposing underground water development has the right to use water that the water supply project will provide.

(b) If an applicant includes a proposal for treatment works, the board may not deliver funds for the treatment works until the applicant has received a permit for construction and operation of the treatment works and approval of the plans and specifications from the commission or unless such a permit is not required by the commission.

Sec. 17.889. CONSIDERATIONS IN PASSING ON APPLICATION. (a) In passing on an application for financial assistance, the board shall consider:

(1) the need of the economically distressed area to be served by the water supply and sewer services in relation to the need of other political subdivisions requiring financial assistance under this subchapter and the relative costs and benefits of all applications;

(2) efforts by the residents of the economically distressed area to provide necessary water supply and sewer services;

(3) the proposed use of labor from inside the political subdivision to perform contracts for providing water supply and sewer services;

(4) the relationship of the proposed water supply and sewer services to minimum state standards for water supply and sewer services adopted under Section 16.343 of this code;

(5) the financial feasibility of the proposed water supply and sewer project based on the budget and repayment schedule submitted under Section 17.887(b)(4) of this code;

(6) whether the applicant has proposed methods for incorporating water conservation into the provision of water and sewer services to the economically distressed area;

(7) whether the county has adopted model rules pursuant to Section 16.343 of this code and the manner of enforcement of model rules;

(8) the feasibility of creating a conservation and reclamation district under Article XVI, Section 59, of the Texas Constitution, to provide the services and finance the water supply and sewer services covered by the application with district bonds issued and sold through the regular bond market; and

(9) the percentage of the total project cost that the financial assistance will comprise.

(c) Additionally, when an application for financial assistance is considered, the board must find that the individuals to be served by a proposed project have a per capita income that averaged 25 percent below the state average for the most recent three consecutive years for which statistics are available.

Sec. 17.890. APPROVAL OR DISAPPROVAL OF APPLICATION. (a) The board may issue a decision to approve an application contingent on changes being made to the plan submitted with the application.

(b) After making the considerations provided by Section 17.889 of this code, the board by resolution shall approve or disapprove the application and shall notify the applicant in writing of its decision.

(c) The board may require the applicant to provide local funds in an amount approved by the board under this subchapter, and the board shall provide the remaining funds from the economically distressed areas account.

Sec. 17.891. APPLICATION AMENDMENT. (a) A political subdivision may request the board in writing to approve a change to or a modification of the budget or project plan included in its application.

(b) A change or modification may not be implemented unless the board provides its written approval.

Sec. 17.892. METHOD OF FINANCIAL ASSISTANCE. The board may provide financial assistance to political subdivisions by using money in the economically distressed areas account to purchase political subdivision bonds.

Sec. 17.893. TERMS OF FINANCIAL ASSISTANCE. (a) The board may use money in the economically distressed areas account to provide financial assistance to a political subdivision to be repaid in the form, manner, and time provided by board rules and in the agreement between the board and the political subdivision taking into consideration the information provided by Section 17.887(b)(7) of this code.

(b) The board may provide financial assistance money under this subchapter for treatment works as defined by Section 17.001 of this code only if the board determines that it is not feasible in the area covered by the application to use septic tanks as the method for providing sewer services under the applicant's plan.

ARTICLE 3. PLAT AND RELATED REQUIREMENTS RELATING TO WATER AND SEWER SERVICE FACILITIES

SECTION 3.01. Subchapter A, Chapter 212, Local Government Code, as amended by Senate Bill 220, Acts of the 71st Legislature, Regular Session, 1989, is amended by amending Sections 212.010, 212.012, 212.017, and 212.018 and by adding Sections 212.0105, 212.0106, and 212.0175 to read as follows:

Sec. 212.010. STANDARDS FOR APPROVAL. (a) The municipal authority responsible for approving plats shall approve a plat if:

(1) it conforms to[:

[~~(1)~~] the general plan of the municipality and its current and future streets, alleys, parks, playgrounds, and public utility facilities;

(2) it conforms to the general plan for the extension of the municipality and its roads, streets, and public highways within the municipality and in its extraterritorial jurisdiction, taking into account access to and extension of sewer and water mains and the instrumentalities of public utilities; [~~and~~]

(3) a bond required under Section 212.0106, if applicable, is filed with the municipality; and

(4) [~~(3)~~] it conforms to any rules adopted under Section 212.002.

(b) However, the municipal authority responsible for approving plats may not approve a plat unless the plat and other documents have been prepared as required by Section 212.0105, if applicable.

Sec. 212.0105. WATER AND SEWER REQUIREMENTS IN CERTAIN COUNTIES. (a) This section applies only to a person who:

(1) is the owner of a tract of land in either:

(A) a county that is contiguous to an international border;

(B) an affected county as defined by Section 16.341, Water Code, that is contiguous to a county described in Paragraph (A) of this subdivision; or

(C) a county in which a political subdivision has received financial assistance through Subchapter K, Chapter 17, Water Code;

(2) divides the tract in a manner that creates any lots that are intended for residential purposes and are two acres or less; and

(3) is required under this subchapter to have a plat prepared for the subdivision.

(b) The owner of the tract:

(1) must:

(A) include on the plat, or have attached to the plat a document containing, a description of the water and sewer service facilities that will be constructed or installed to service the subdivision and a statement of the date by which the facilities will be fully operable; and

(B) have attached to the plat a document prepared by an engineer registered to practice in this state certifying that the water and sewer service facilities described by the plat, or on the document attached to the plat, are in compliance with standards and rules that are at least as strict as those adopted by the Texas Water Development Board under Section 16.342, Water Code; or

(2) must:

(A) include on the plat a statement that water and sewer service facilities are unnecessary for the subdivision; and

(B) have attached to the plat a document prepared by an engineer registered to practice in this state certifying that water and sewer service facilities are unnecessary for the subdivision under the standards and rules adopted by the Texas Water Development Board under Section 16.342, Water Code.

(c) The governing body of the municipality may extend, beyond the date specified on the plat or on the document attached to the plat, the date by which the water and sewer service facilities must be fully operable if the governing body finds:

(1) the extension is not contrary to the public interest; and

(2) due to special conditions, a strict enforcement of the deadline would result in an unnecessary hardship.

Sec. 212.0106. BOND REQUIREMENTS AND OTHER FINANCIAL GUARANTEES IN CERTAIN COUNTIES. (a) This section applies only to a person described by Section 212.0105(a).

(b) If the governing body of a municipality in a county described by Section 212.0105(a)(1) requires the owner of the tract to execute a bond, the owner must do so before subdividing the tract unless an alternative financial guarantee is provided under Subsection (c). The bond must:

(1) be payable to the presiding officer of the governing body or to the presiding officer's successors in office;

(2) be in an amount determined by the governing body to be adequate to ensure the proper construction or installation of the water and sewer service facilities to service the subdivision but not to exceed the estimated cost of the construction or installation of the facilities;

(3) be executed with sureties as may be approved by the governing body;

(4) be executed by a company authorized to do business as a surety in this state if the governing body requires a surety bond executed by a corporate surety; and

(5) be conditioned that the water and sewer service facilities will be constructed or installed:

(A) in compliance with standards and rules at least as strict as those adopted by the Texas Water Development Board under Section 16.342, Water Code; and

(B) within the time stated on the plat, or on the document attached to the plat, for the subdivision.

(c) In lieu of the bond an owner may deposit cash, a letter of credit issued by a federally insured financial institution, or other acceptable financial guarantee.

(d) If a letter of credit is used, it must:

(1) list as the sole beneficiary the presiding officer of the governing body; and

(2) be conditioned that the water and sewer service facilities will be constructed or installed:

(A) in compliance with standards and rules at least as strict as those adopted by the Texas Water Development Board under Section 16.342, Water Code; and

(B) within the time stated on the plat, or on the document attached to the plat, for the subdivision.

Sec. 212.012. CONNECTION OF [~~PUBLIC~~] UTILITIES. (a) An entity described by Subsection (b) may not serve or connect any land with water, sewer, electricity, gas, or other utility service unless the entity has been presented with or otherwise holds a certificate applicable to the land issued under Section 212.0115.

(b) The prohibition established by Subsection (a) applies only to:

(1) a municipality and officials of a municipality that provides water, sewer, electricity, gas, or other utility service;

(2) a municipally owned or municipally operated utility that provides any of those services; [~~and~~]

(3) a public utility that provides any of those services;

(4) a water supply or sewer service corporation organized and operating under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes), that provides any of those services;

(5) a county that provides any of those services; and

(6) a special district or authority created by or under state law that provides any of those services.

(c) This section does not apply to any area covered by a development plat duly approved under Subchapter B or under an ordinance or rule relating to the development plat.

(d) The prohibition established by Subsection (a) applies only to land that an entity described by Subsection (b)(1), (2), or (3) first serves or first connects with services on or after September 1, 1987. The prohibition applies only to land that an entity described by Subsection (b)(4), (5), or (6) first serves or first connects with services on or after September 1, 1989. [~~The law from which this section is derived, as it existed before September 1, 1987, continues to apply to land that an entity first served or first connected with services before that date, and the former law is continued in effect for that purpose.~~]

Sec. 212.017. CONFLICT OF INTEREST [~~ACCEPTANCE OF PLAT BY COUNTY CLERK~~]; PENALTY. (a) In this section, "subdivided tract" means a tract of land, as a whole, that is subdivided. The term does not mean an individual lot in a subdivided tract of land.

(b) A person has a substantial interest in a subdivided tract if the person:

(1) has an equitable or legal ownership interest in the tract with a fair market value of $2,500 or more;

(2) acts as a developer of the tract;

(3) owns 10 percent or more of the voting stock or shares of, or owns either 10 percent or more or $5,000 or more of the fair market value of, a business entity that:

(A) has an equitable or legal ownership interest in the tract with a fair market value of $2,500 or more; or

(B) acts as a developer of the tract; or

(4) receives, in a calendar year, funds from a business entity described by Subdivision (3) that exceed 10 percent of the person's gross income for the previous year.

(c) A person also is considered to have a substantial interest in a subdivided tract if the person is related in the first degree by consanguinity or affinity to another person who, under Subsection (b), has a substantial interest in the tract.

(d) If a member of the municipal authority responsible for approving plats has a substantial interest in a subdivided tract, the member shall file, before a vote or decision regarding the approval of a plat for the tract, an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter. The affidavit must be filed with the municipal secretary or clerk.

(e) A member of the municipal authority responsible for approving plats commits an offense if the member violates Subsection (d). An offense under this subsection is a Class A misdemeanor.

(f) The finding by a court of a violation of this section does not render voidable an action of the municipal authority responsible for approving plats unless the measure would not have passed the municipal authority without the vote of the member who violated this section. [~~When a plat is presented to the county clerk for filing, the county clerk shall determine whether the plat is subject to this subchapter and, if so, shall determine whether the endorsements required by this subchapter appear on the plat.~~

[~~(b) If the required endorsements appear on the plat, the county clerk shall accept the plat for recording, subject to Section 242.001. If the endorsements do not appear, the county clerk shall refuse to accept the plat.~~

[~~(c) If a plat does not indicate whether land covered by the plat is in the extraterritorial jurisdiction of the municipality, the county clerk may require the person presenting the plat for recording to file with the clerk an affidavit stating that information.~~

[~~(d) A county clerk commits an offense if the clerk or the clerk's deputy files or records a plat in violation of this subchapter.~~

[~~(e) A deputy commits an offense if the deputy files or records a plat in violation of this subchapter.~~

[~~(f) An offense under this section is a misdemeanor punishable by a fine of not less than $50 or more than $200.~~]

Sec. 212.0175. ENFORCEMENT IN CERTAIN COUNTIES; PENALTY. (a) The attorney general may take any action necessary to enforce a requirement imposed by or under Section 212.0105 or 212.0106 or to ensure that water and sewer service facilities are constructed or installed to service a subdivision in compliance with standards and rules that are at least as strict as those adopted by the Texas Water Development Board under Section 16.342, Water Code.

(b) A person who violates Section 212.0105 or 212.0106 or fails to timely provide for the construction or installation of water or sewer service facilities that the person described on the plat, or on the document attached to the plat, as required by Section 212.0105 is subject to a civil penalty of not less than $500 nor more than $1,000 plus court costs and attorney's fees.

(c) An owner of a tract of land commits an offense if the owner knowingly or intentionally violates a requirement imposed by or under Section 212.0105 or 212.0106 or fails to timely provide for the construction or installation of water or sewer service facilities that the person described on a plat, or on a document attached to a plat, as required by Section 212.0105. An offense under this subsection is a Class B misdemeanor.

(d) A reference in this section to an "owner of a tract of land" does not include the owner of an individual lot in a subdivided tract of land.

Sec. 212.018. ENFORCEMENT IN GENERAL. (a) At the request of the governing body of the municipality, the municipal attorney or any other attorney representing the municipality may file an action in a court of competent jurisdiction to:

(1) enjoin the violation or threatened violation by the owner of a tract of land of a requirement regarding the tract and established by, or adopted by the governing body under, this subchapter; or

(2) recover damages from the owner of a tract of land in an amount adequate for the municipality to undertake any construction or other activity necessary to bring about compliance with a requirement regarding the tract and established by, or adopted by the governing body under, this subchapter.

(b) A reference in this section to an "owner of a tract of land" does not include the owner of an individual lot in a subdivided tract of land.

SECTION 3.02. Section 212.004, Local Government Code, as amended by Senate Bill 220, Acts of the 71st Legislature, Regular Session, 1989, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) The owner of a tract of land located within the limits or in the extraterritorial jurisdiction of a municipality who divides the tract in two or more parts[~~, by using a metes and bounds description in a deed conveyance or in a contract for a deed or by any other method,~~] to lay out a subdivision of the tract, including an addition to a municipality, or to lay out suburban, building, or other lots, and to lay out streets, alleys, squares, parks, or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the streets, alleys, squares, parks, or other parts must have a plat of the subdivision prepared. A division of a tract under this subsection includes a division regardless of whether it is made by using a metes and bounds description in a deed of conveyance or in a contract for a deed, by using a contract of sale or other executory contract to convey, or by using any other method.

(e) The plat is subject to the filing and recording provisions of Section 12.002, Property Code.

SECTION 3.03. Section 212.0115(c), Local Government Code, as added by Senate Bill 220, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(c) On the written request of an owner of land, an entity that provides [~~a public~~] utility service, or the governing body of the municipality, the municipal authority responsible for approving plats shall make the following determinations regarding the owner's land or the land in which the entity [~~utility~~] or governing body is interested that is located within the jurisdiction of the municipality:

(1) whether a plat is required under this subchapter for the land; and

(2) if a plat is required, whether it has been prepared and whether it has been reviewed and approved by the authority.

SECTION 3.04. Chapter 232, Local Government Code, as amended by Senate Bill 220, Acts of the 71st Legislature, Regular Session, 1989, is amended by amending Sections 232.002, 232.003, and 232.005 and by adding Sections 232.0015, 232.0035, 232.0036, 232.0046, 232.0047, 232.0048, and 232.0049 to read as follows:

Sec. 232.0015. EXCEPTION TO PLAT REQUIREMENT: COUNTY DETERMINATION. To determine whether specific divisions of land are required to be platted, a county may define and classify the divisions. A county need not require platting for every division of land otherwise within the scope of this chapter.

Sec. 232.002. APPROVAL BY COUNTY REQUIRED. (a) The commissioners court of the county in which the land is located must approve, by an order entered in the minutes of the court, a plat required by Section 232.001. The commissioners court may refuse to approve a plat if it does not meet the requirements prescribed by or under this chapter or if any bond required under this chapter is not filed with the county.

(b) The commissioners court may not approve a plat unless the plat and other documents have been prepared as required by Section 232.0035, if applicable.

Sec. 232.003. SUBDIVISION REQUIREMENTS. By an order adopted and entered in the minutes of the commissioners court, and after a notice is published in a newspaper of general circulation in the county, the commissioners court may:

(1) require a right-of-way on a street or road that functions as a main artery in a subdivision, of a width of not less than 50 feet or more than 100 feet;

(2) require a right-of-way on any other street or road in a subdivision of not less than 40 feet or more than 70 feet;

(3) require that the shoulder-to-shoulder width on collectors or main arteries within the right-of-way be not less than 32 feet or more than 56 feet, and that the shoulder-to-shoulder width on any other street or road be not less than 25 feet or more than 35 feet;

(4) adopt, based on the amount and kind of travel over each street or road in a subdivision, reasonable specifications relating to the construction of each street or road;

(5) adopt reasonable specifications to provide adequate drainage for each street or road in a subdivision in accordance with standard engineering practices;

(6) require that each [~~plat required by Section 232.001 for a subdivision and that each~~] purchase contract made between a subdivider and a purchaser of land in the subdivision contain a statement describing the extent to which water will be made available to the subdivision and, if it will be made available, how and when; and

(7) require that the owner of the tract to be subdivided execute a good and sufficient bond in the manner provided by Section 232.004.

Sec. 232.0035. WATER AND SEWER REQUIREMENTS IN CERTAIN COUNTIES. (a) This section applies only to a person who:

(1) is the owner of a tract of land in either:

(A) a county that is contiguous to an international border;

(B) an affected county as defined by Section 16.341, Water Code, that is contiguous to a county described in Paragraph (A) of this subdivision; or

(C) a county in which a political subdivision has received financial assistance through Subchapter K, Chapter 17, Water Code;

(2) divides the tract in a manner that creates any lots that are intended for residential purposes and are two acres or less; and

(3) is required under this subchapter to have a plat prepared for the subdivision.

(b) The owner of the tract:

(1) must:

(A) include on the plat, or have attached to the plat a document containing, a description of the water and sewer service facilities that will be constructed or installed to service the subdivision and a statement of the date by which the facilities will be fully operable; and

(B) have attached to the plat a document prepared by an engineer registered to practice in this state certifying that the water and sewer service facilities described by the plat, or the document attached to the plat, are in compliance with standards and rules that are at least as strict as those adopted by the Texas Water Development Board under Section 16.342, Water Code; or

(2) must:

(A) include on the plat a statement that water and sewer service facilities are unnecessary for the subdivision; and

(B) have attached to the plat a document prepared by an engineer registered to practice in this state certifying that water and sewer service facilities are unnecessary for the subdivision under the standards and rules adopted by the Texas Water Development Board under Section 16.342, Water Code.

(c) The commissioners court of the county may extend, beyond the date specified on the plat or on the document attached to the plat, the date by which the water and sewer service facilities must be fully operable if the court finds:

(1) the extension is not contrary to the public interest; and

(2) due to special conditions, a strict enforcement of the deadline would result in an unnecessary hardship.

Sec. 232.0036. BOND REQUIREMENTS AND OTHER FINANCIAL GUARANTEES IN CERTAIN COUNTIES. (a) This section applies only to a person described by Section 232.0035(a).

(b) If the commissioners court of a county described by Section 232.0035(a)(1) requires the owner of the tract to execute a bond, the owner must do so before subdividing the tract unless an alternative financial guarantee is provided under Subsection (c). The bond must:

(1) be payable to the county judge of the county or to the judge's successors in office;

(2) be in an amount determined by the commissioners court to be adequate to ensure the proper construction or installation of the water and sewer service facilities to service the subdivision but not to exceed the estimated cost of the construction or installation of the facilities;

(3) be executed with sureties as may be approved by the court;

(4) be executed by a company authorized to do business as a surety in this state if the court requires a surety bond executed by a corporate surety; and

(5) be conditioned that the water and sewer service facilities will be constructed or installed:

(A) in compliance with standards and rules at least as strict as those adopted by the Texas Water Development Board under Section 16.342, Water Code; and

(B) within the time stated on the plat, or on the document attached to the plat, for the subdivision.

(c) In lieu of the bond an owner may deposit cash, a letter of credit issued by a federally insured financial institution, or other acceptable financial guarantee.

(d) If a letter of credit is used, it must:

(1) list as the sole beneficiary the county judge of the county; and

(2) be conditioned that the water and sewer service facilities will be constructed or installed:

(A) in compliance with standards and rules at least as strict as those adopted by the Texas Water Development Board under Section 16.342, Water Code; and

(B) within the time stated on the plat, or on the document attached to the plat, for the subdivision.

Sec. 232.0046. CERTIFICATION REGARDING COMPLIANCE WITH PLAT REQUIREMENTS IN CERTAIN COUNTIES. (a) This section applies only to a county described by Section 232.0035(a)(1).

(b) For the purposes of this section, land is considered to be within the jurisdiction of a county if the land is located in the county and outside the limits of municipalities.

(c) On the approval of a plat by the commissioners court, the court shall issue to the person applying for the approval a certificate stating that the plat has been reviewed and approved by the court.

(d) On the written request of an owner of land, an entity that provides utility service, or the commissioners court, the court shall make the following determinations regarding the owner's land or the land in which the entity or court is interested that is located within the jurisdiction of the county:

(1) whether a plat is required under this chapter for the land; and

(2) if a plat is required, whether it has been prepared and whether it has been reviewed and approved by the court.

(e) The request made under Subsection (d) must identify the land that is the subject of the request.

(f) If the commissioners court determines under Subsection (d) that a plat is not required, the court shall issue to the requesting party a written certification of that determination. If the commissioners court determines that a plat is required and that the plat has been prepared and has been reviewed and approved by the court, the court shall issue to the requesting party a written certification of that determination.

(g) The commissioners court shall make its determination within 20 days after the date it receives the request under Subsection (d) and shall issue the certificate, if appropriate, within 10 days after the date the determination is made.

(h) The commissioners court may adopt rules it considers necessary to administer its functions under this section.

Sec. 232.0047. CONNECTION OF UTILITIES IN CERTAIN COUNTIES. (a) This section applies only to land covered by Section 232.0046.

(b) An entity described by Subsection (c) may not serve or connect any land with water, sewer, electricity, gas, or other utility service unless the entity has been presented with or otherwise holds a certificate applicable to the land issued under Section 232.0046.

(c) The prohibition established by Subsection (b) applies only to:

(1) a municipality and officials of a municipality that provides water, sewer, electricity, gas, or other utility service;

(2) a municipally owned or municipally operated utility that provides any of those services;

(3) a public utility that provides any of those services;

(4) a water supply or sewer service corporation organized and operating under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes), that provides any of those services;

(5) a county that provides any of those services; and

(6) a special district or authority created by or under state law that provides any of those services.

(d) The prohibition established by Subsection (b) applies only to land that an entity described by Subsection (c) first serves or first connects with services on or after September 1, 1989.

Sec. 232.0048. CONFLICT OF INTEREST; PENALTY. (a) In this section, "subdivided tract" means a tract of land, as a whole, that is subdivided. The term does not mean an individual lot in a subdivided tract of land.

(b) A person has a substantial interest in a subdivided tract if the person:

(1) has an equitable or legal ownership interest in the tract with a fair market value of $2,500 or more;

(2) acts as a developer of the tract;

(3) owns 10 percent or more of the voting stock or shares of, or owns either 10 percent or more or $5,000 or more of the fair market value of, a business entity that:

(A) has an equitable or legal ownership interest in the tract with a fair market value of $2,500 or more; or

(B) acts as a developer of the tract; or

(4) receives, in a calendar year, funds from a business entity described by Subdivision (3) that exceed 10 percent of the person's gross income for the previous year.

(c) A person also is considered to have a substantial interest in a subdivided tract if the person is related in the first degree by consanguinity or affinity to another person who, under Subsection (b), has a substantial interest in the tract.

(d) If a member of the commissioners court of a county has a substantial interest in a subdivided tract, the member shall file, before a vote or decision regarding the approval of a plat for the tract, an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter. The affidavit must be filed with the county clerk.

(e) A member of the commissioners court of a county commits an offense if the member violates Subsection (d). An offense under this subsection is a Class A misdemeanor.

(f) The finding by a court of a violation of this section does not render voidable an action of the commissioners court unless the measure would not have passed the commissioners court without the vote of the member who violated this section.

Sec. 232.0049. ENFORCEMENT IN CERTAIN COUNTIES; PENALTY. (a) The attorney general may take any action necessary to enforce a requirement imposed by or under Section 232.0035 or 232.0036 or to ensure that water and sewer service facilities are constructed or installed to service a subdivision in compliance with standards and rules that are at least as strict as those adopted by the Texas Water Development Board under Section 16.342, Water Code.

(b) A person who violates Section 232.0035 or 232.0036 or fails to timely provide for the construction or installation of water or sewer service facilities that the person described on the plat, or on the document attached to the plat, as required by Section 232.0035 is subject to a civil penalty of not less than $500 nor more than $1,000 plus court costs and attorney's fees.

(c) An owner of a tract of land commits an offense if the owner knowingly or intentionally fails to timely provide for the construction or installation of water or sewer service facilities that the person described on a plat, or on a document attached to a plat, as required by Section 232.0035. An offense under this subsection is a Class B misdemeanor.

(d) A reference in this section to an "owner of a tract of land" does not include the owner of an individual lot in a subdivided tract of land.

Sec. 232.005. ENFORCEMENT IN GENERAL; PENALTY. (a) At the request of the commissioners court, the county attorney or other prosecuting attorney for the county may file an action in a court of competent jurisdiction to:

(1) enjoin the violation or threatened violation of a requirement established by, or adopted by the commissioners court under a preceding section of this chapter [~~Sections 232.001-232.0045~~]; or

(2) recover damages in an amount adequate for the county to undertake any construction or other activity necessary to bring about compliance with a requirement established by, or adopted by the commissioners court under a preceding section of this chapter [~~Sections 232.001-232.0045~~].

(b) A person commits an offense if the person knowingly or intentionally violates a requirement established by, or adopted by the commissioners court under a preceding section of this chapter [~~Sections 232.001-232.0045~~]. An offense under this subsection is a Class B misdemeanor. This subsection does not apply to a violation for which a criminal penalty is prescribed by Section 232.048.

(c) A requirement that was established by or adopted under Chapter 436, Acts of the 55th Legislature, Regular Session, 1957 (Article 6626a, Vernon's Texas Civil Statutes), or Chapter 151, Acts of the 52nd Legislature, Regular Session, 1951 (Article 2372k, Vernon's Texas Civil Statutes), before September 1, 1983, and that, after that date, continues to apply to a subdivision of land is enforceable under Subsection (a). A knowing or intentional violation of the requirement is an offense under Subsection (b).

SECTION 3.05. Section 232.001, Local Government Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) The owner of a tract of land located outside the limits of a municipality who divides the tract into two or more parts to lay out a subdivision of the tract, including an addition, or to lay out suburban lots or building lots, and to lay out streets, alleys, squares, parks, or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the streets, alleys, squares, parks, or other parts must have a plat of the subdivision prepared. A division of a tract under this subsection includes a division regardless of whether it is made by using a metes and bounds description in a deed of conveyance or in a contract for a deed, by using a contract of sale or other executory contract to convey, or by using any other method.

(e) The plat is subject to the filing and recording provisions of Section 12.002, Property Code.

SECTION 3.06. Subsection (b), Section 232.006, Local Government Code, is amended to read as follows:

(b) If a county elects to operate under this section, Section 232.005 does not apply to the county. The sections of this chapter preceding Section 232.005 [~~Sections 232.001-232.004~~] do apply to the county in the same manner that they apply to other counties except that:

(1) they apply only to tracts of land located outside municipalities and the extraterritorial jurisdiction of municipalities, as determined under Chapter 42;

(2) the commissioners court of the county, instead of having the powers granted by Sections 232.003(2) and (3), may:

(A) require a right-of-way on a street or road that does not function as a main artery in the subdivision of not less than 40 feet or more than 50 feet; and

(B) require that the street cut on a main artery within the right-of-way be not less than 30 feet or more than 45 feet, and that the street cut on any other street or road within the right-of-way be not less than 25 feet or more than 35 feet; and

(3) Section 232.004(5)(B) does not apply to the county.

SECTION 3.07. Chapter 192, Local Government Code, is amended by adding Section 192.0015 to read as follows:

Sec. 192.0015. SUBDIVISION PLAT. In recording a plat or replat of a subdivision of real property, the county clerk and a deputy of the clerk are subject to the requirements and prohibitions established by Section 12.002, Property Code.

SECTION 3.08. Subchapter Z, Chapter 240, Local Government Code, is amended by adding Section 240.903 to read as follows:

Sec. 240.903. PREPARATION BY ATTORNEY GENERAL OF LIST OF COUNTY AUTHORITY. (a) The attorney general shall prepare a list briefly describing the powers and duties given to the counties of this state regarding the regulation of land use, the regulation of structures, the platting and subdividing of land, and the provision and regulation of water, sewer, and other utility service to residential property. This list also must contain a citation to the law under which each power or duty is established.

(b) On a biennial basis, the attorney general shall update the list and send a copy to the county judge of each county in the state.

SECTION 3.09. Sections 12.002(a)-(d), Property Code, are amended to read as follows:

(a) The county clerk or a deputy of the clerk with whom a plat or replat of a subdivision of real property is filed for recording shall determine whether the plat or replat is required by law to be approved by a county or municipal authority or both. The clerk or deputy may not record a plat or replat requiring approval [~~of a subdivision of real property~~] unless it is approved as provided by law by the appropriate [~~county or municipal~~] authority and unless the plat or replat has attached to it the documents required by Section 212.0105 or 232.0035, Local Government Code, if applicable. If a plat or replat does not indicate whether land covered by the plat or replat is in the extraterritorial jurisdiction of the municipality, the county clerk may require the person filing the plat or replat for recording to file with the clerk an affidavit stating that information.

(b) A person may not file for record or have recorded in the county clerk's office a plat or replat of a subdivision of real property unless it is approved as provided by law by the appropriate [~~county or municipal~~] authority and unless the plat or replat has attached to it the documents required by Section 212.0105 or 232.0035, Local Government Code, if applicable.

(c) A person who subdivides real property may not use the subdivision's description in a deed of conveyance, a contract for a deed, or a contract of sale or other executory contract to convey that is delivered to a purchaser unless the plat or replat of the subdivision is approved and is filed for record with the county clerk of the county in which the property is located and unless the plat or replat has attached to it the documents required by Section 212.0105 or 232.0035, Local Government Code, if applicable.

(d) A county clerk or a deputy of the clerk commits an offense if the clerk or deputy violates Subsection (a) in regard to a plat or replat required to be approved by a county or municipal authority or both. An offense under this subsection is a misdemeanor punishable by a fine of not less than $50 or more than $200.

SECTION 3.10. Section 5, Article 4477-7e, Revised Statutes, as added by Chapter 406, Acts of the 70th Legislature, Regular Session, 1987, is amended by adding Subsection (h) to read as follows:

(h) A local governmental entity that applies to the Texas Water Development Board for financial assistance under a program for economically distressed areas must take all actions necessary to receive and maintain a designation as an authorized agent of the department.

SECTION 3.11. Article 4477-7e, Revised Statutes, as added by Chapter 406, Acts of the 70th Legislature, Regular Session, 1987, is amended by adding Section 6A to read as follows:

Sec. 6A. COUNTY MAP. (a) If the department designates a local governmental entity as its authorized agent and if the entity intends to apply to the Texas Water Development Board for financial assistance under a program for economically distressed areas, the commissioners court of the county in which the

entity is located shall prepare a map of the county area outside the limits of municipalities. The entity shall give to the commissioners court a written notice of the entity's intention to apply for the assistance. The map must show the parts of the area in which the different types of on-site sewage disposal systems may be appropriately located and the parts in which the different types of systems may not be appropriately located.

(b) The commissioners court shall file the map in the office of the county clerk.

(c) The commissioners court, at least every five years, shall review the map and make changes to it as necessary to keep the map accurate.

SECTION 3.12. Section 58A, Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes), as amended by Senate Bill 220, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

Sec. 58A. CONDITIONS REQUIRING REFUSAL OF SERVICE. The holder of a certificate of public convenience and necessity shall refuse to serve a customer within its certified area if the holder of the certificate is prohibited from providing the service under Section 212.012 or 232.0047, Local Government Code.

SECTION 3.13. Section 13.2501, Water Code, as amended by Senate Bill 220, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

Sec. 13.2501. CONDITIONS REQUIRING REFUSAL OF SERVICE. The holder of a certificate of public convenience and necessity shall refuse to serve a customer within its certified area if the holder of the certificate is prohibited from providing the service under Section 212.012 or 232.0047, Local Government Code.

ARTICLE 4. URBAN COUNTIES

SECTION 4.01. Chapter 50, Water Code, is amended by adding Subchapter P to read as follows:

SUBCHAPTER P. DESIGNATION OF URBAN PROPERTY IN CERTAIN DISTRICTS

Sec. 50.701. DEFINITIONS. In this subchapter:

(1) "Urban property" means land that has been subdivided into town lots, or town lots and blocks, or small parcels of the same general nature of town lots, or town blocks and lots, designed, intended, or suitable for residential or other nonagricultural purposes, as distinguished from farm acreage, including streets, alleys, parkways, parks, and railroad property and rights-of-way within that subdivided land, and that is in a subdivision that is within the corporate limits or extraterritorial jurisdiction of a city that has subdivision approval jurisdiction under Chapter 212, Local Government Code, or land for which subdivision approval has been sought by the owner or owners by the filing of a plat with a city that has subdivision approval jurisdiction under that authority, or land that is located in an area for which a retail public utility holds a certificate of convenience and necessity issued by the Texas Water Commission, and for which a plat or map of the subdivision has been filed and recorded in the office of the county clerk of the county in which the subdivision or any part of the subdivision is located.

(2) "District" means a district or authority created under Article III, Section 52(b)(1) or (2), or Article XVI, Section 59, of the Texas Constitution created for the principal purpose of or principally engaged in furnishing water diverted from the Rio Grande downstream of Falcon Dam for the irrigation of agricultural land.

(3) "Board" means the board of directors of any district.

(4) "Commission" means the Texas Water Commission.

Sec. 50.702. DESIGNATION OF URBAN PROPERTY. Property located within the boundaries of a district may be designated by the board of directors as urban property within the district in the manner provided by this subchapter.

Sec. 50.703. APPLICATION. (a) The owner or owners of a majority in acreage of property included within the boundaries of a district, or their authorized agent, may apply to the district to designate the property as urban property.

(b) The application must be in writing and must:

(1) describe the property to be designated as urban property by identifying the lot or block number of the subdivision and the name or designation of the subdivision as shown on the recorded plat of the subdivision or by some other method of identification;

(2) state that the property is used or intended to be used for the purposes for which it was subdivided and is not used or intended to be used, in whole or in part, for agricultural purposes;

(3) include a correct copy of the recorded map or plat of the subdivision clearly specifying the part of the subdivision, if less than the whole subdivision, to be designated as urban property;

(4) include proof of the applicant's ownership of a majority of acreage in the property to be designated as urban property; and

(5) include a sworn acknowledgment by the owner or owners of the majority of acreage of the property.

Sec. 50.704. CONSIDERATION OF APPLICATION. Not later than the 10th day after the filing of the application, the board shall issue notice as provided by this subchapter and shall hold a hearing to determine whether the property should be designated as urban property.

Sec. 50.705. NOTICE AND HEARING. (a) The board shall set the application for a public hearing to be held at the regular office of the district not less than 10 days or more than 15 days after the date of the notice of hearing.

(b) The board shall have notice of the hearing posted in a conspicuous place in the office of the district and at the courthouse of the county in which the property is located.

(c) At the hearing, the board shall determine whether the property that is the subject of the application should be designated as urban property. In conducting the hearing, the board may hear testimony and take evidence from representatives of the applicant, the staff of the district, and any other person affected by the application.

(d) During the hearing, the board shall exclude property from the proposed area to be designated as urban property if an owner of affected property presents a written petition which accurately describes by lot and block number the property to be excluded. Property excluded pursuant to this subsection is not entitled to receive potable water service from a city or retail supplier ultimately obtaining water rights in accordance with this subchapter unless the property is subsequently designated as urban property.

Sec. 50.706. ORDER. (a) Not later than the 30th day after the date the hearing on the application ends, the board shall issue an order granting or denying the application in whole or in part.

(b) The board shall grant the application, in whole or in part, if it finds that:

(1) the property that is the subject of the application meets the definition of urban property as provided by this subchapter;

(2) the owners of a majority in acreage of the urban property that is the subject of the application do not desire irrigation of that property; and

(3) the property that is the subject of the application is not used or intended to be used for agricultural purposes.

(c) If the board denies the application, in whole or in part, it shall state in its order those findings that serve as the basis for the denial.

(d) If the board fails to act on the application within the time required by Subsection (a) of this section, the application is deemed to be granted in whole and the property that is the subject of the application is designated as urban property for purposes of this subchapter.

(e) A copy of an order designating property within the district as urban property, certified to and acknowledged by the secretary of the board, shall be

recorded by the district in the deed records in the county in which the property is located. If the board has failed to act on the application and the application is deemed granted under Subsection (d) of this section, the applicant shall file an affidavit in the deed records in the county in which the property is located verifying those matters specified in Subsection (b) of this section.

Sec. 50.707. WATER RIGHTS. (a) After the district adopts an order designating property as urban property or an application is deemed granted in whole pursuant to Section 50.706(d) of this code and after at least one residential customer resides on that property, the city or other retail supplier who proposes to serve the land with a potable water supply may petition the district to apply to the commission to convert the proportionate water rights previously allocated for the land designated as urban property from irrigation use rights to municipal use rights for the use and benefit of the city or other retail supplier.

(b) Until the commission converts the water right under an application made under this section, the district holds the water right and water covered by that right in trust for the city or retail supplier.

(c) If the city or retail supplier reaches the use of 90 percent or more of its total allocation of water under water rights held by the district and if the city or retail supplier submits a request to the district, the district shall furnish to the city or retail supplier water held in trust under Subsection (b) of this section at the conversion rate adopted by the commission. At the time the city or retail supplier reaches use of 75 percent or more of its allocated water under district water rights, the city or retail supplier shall give written notice to the district of this fact and an estimated time at which it will reach the use of at least 90 percent of its total allocation. Until the city or retail supplier gives this notice to the district, the district may use for district purposes as authorized by law, commission rules, and district water rights permits the water allocated to the city or retail supplier.

(d) The district shall make that application to the commission not later than the 30th day after the date of the filing of a petition by the city or other retail supplier who proposes to serve the land with a potable water supply.

(e) On the conversion of the water rights by the commission, the water shall be delivered to the city or other retail supplier by the district in the manner to which those entities agree under this code and at an agreed rate that is developed in accordance with state law and rules of the Texas Water Commission.

(f) After the conversion of the water rights by the commission takes effect, an owner of property in the area designated as urban property is not entitled to irrigation water from the district for that property.

Sec. 50.708. OBLIGATIONS UNAFFECTED. (a) The designation of land within a district as urban property, the conversion of irrigation use water rights to municipal use water rights, and the delivery of water by the district to the city or other retail supplier who proposes to serve the land with a potable water supply does not affect a district's right to assess taxes and other charges necessary to pay the proportionate share of the bonded indebtedness that the designated urban property bears to the district as a whole, or the right to collect those assessments for operations and maintenance expenses incurred by the district related to the urban property.

(b) On the designation of land as urban property each property owner in the area designated is obligated to pay to the district necessary taxes, charges, and assessments to retire the owner's pro rata share of the district's indebtedness as of the effective date of the designation, and the district may levy or impose and collect necessary taxes, charges, and assessments from those property owners to retire their pro rata share of the debt.

Sec. 50.709. RIGHT TO JUDICIAL REVIEW. (a) An applicant seeking designation of property as urban property under this subchapter is entitled to

judicial review of any final decision of the district in a district court of any county in which the property that is the subject of the application is located.

(b) A petition for review shall be filed in the district court not later than the 30th day following the final decision of the district. The review shall be de novo and the court shall make findings with regard to those issues that the district is required to address by virtue of this subchapter.

(c) The prevailing party in an appeal to the district court is entitled to recover costs of suit, including reasonable attorney's fees. The costs shall be set by the court.

SECTION 4.02. Chapter 707, Acts of the 69th Legislature, Regular Session, 1985 (Article 973c, Vernon's Texas Civil Statutes), is repealed.

ARTICLE 5. MISCELLANEOUS PROVISIONS

SECTION 5.01. The changes in law relating to grants from the water loan assistance fund apply only to applications for grants filed and grants made on or after that date. Applications filed and grants made before that date are governed by the law in effect at the time they were filed or made, as appropriate.

SECTION 5.02. The changes in law made by this Act to Chapters 212 and 232, Local Government Code, and to Section 12.002, Property Code, apply only to a subdivision of a tract of land and to an owner of the tract if the tract is subdivided on or after September 1, 1989.

SECTION 5.03. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 1989.

(b) Sections 2.13 through 2.21 of this Act take effect on the date on which the constitutional amendment proposed by **S.J.R No. 5**, 71st Legislature, Regular Session, takes effect. If that amendment is not approved by the voters, Sections 2.13 through 2.21 of this Act have no effect.

SECTION 5.04. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Amendment No. 1 - A. Moreno

Amend **C.S.S.B. 2** as follows:

(1) Strike Section 2.03

(2) On page 13, strike lines 12 and 13 and substitute the following:

(3) "Political subdivision" means an affected county, a municipality located in an affected county, a district or authority created under Article III, Section

(3) On page 15, line 24, strike "developed by the board".

(4) On page 16, strike line 23 and substitute the following:

(b) In addition to any other authority to issue bonds or other obligations or incur any debt, a political subdivision other than a nonprofit water

(5) On page 19, between lines 19 and 20, insert a new Subsection (c) to read as follows:

(c) The amount of a distressed areas water financing fee imposed by a political subdivision pursuant to this section must be reasonably related to that portion of the total amount required to be paid annually in repayment of financial assistance that can be attributed to undeveloped property in the area to be served by water supply and sewer services provided with that financial assistance.

(6) Reletter Subsections (c) through (e) of Section 16.348 as Subsections (d) through (f) respectively.

(7) On page 35, strike line 10 and substitute the following:

"(4) that each partial payment shall not exceed 95 [~~90~~]".

(8) On page 35, strike line 13 and substitute the following: "complete, a partial release of the five [~~10~~] percent retainage may be made".

(9) On page 36, strike lines 13 through 16 and substitute the following: innovative, nonconventional methods of treatment such as rock reed, root zone, ponding, irrigation, or other methods.

(10) On page 36, strike lines 21 through 24 and substitute the following: innovative, nonconventional methods of treatment such as rock reed, root zone, ponding, irrigation, or other methods.

(11) On page 38, between lines 10 and 11, insert a new Subdivision (2) to read as follows:

(2) "Financial assistance" means the funds provided by the board to political subdivisions for water supply and sewer services under this subchapter.

(12) On page 38, line 11, strike "(2)" and substitute "(3)"; line 17, strike "(3)" and substitute "(4)"; and line 23, strike "(4)" and substitute "(5)".

(13) On page 38, line 15, between "district" and "created" insert "or authority".

(14) On page 39, line 5, between "services" and the period insert ", including providing funds from the account for the state's participation in federal programs that provide assistance to political subdivisions".

(15) On page 39, strike lines 7 through 21 and substitute the following: To be eligible for financial assistance under this subchapter, a county:

(1) must have a per capita income that averaged 25 percent below the state average for the most recent three consecutive years for which statistics are available and an unemployment rate that averaged 25 percent above the state average for the most recent three consecutive years for which statistics are available; or

(2) be located adjacent to an international border.

(16) On page 41, line 11, strike "provided by the board" and substitute "consistent with board rules and guidelines".

(17) On page 41, line 22, between "the" and "political" insert "appropriate".

(18) On page 41, line 27, between "applicant" and "from" insert "pursuant to board rules and guidelines".

(19) On page 43, line 1, strike "and".

(20) On page 43, line 4, strike the period and insert "; and".

(21) On page 43, between lines 4 and 5, insert the following:

(15) any other information required by the board.

(22) On page 45, strike lines 5 through 7, and substitute the following:

(5) the financing of the proposed water supply and sewer project including consideration of:

(A) the budget and repayment schedule submitted under Section 17.887(b)(4) of this code;

(B) other items included in the application relating to financing; and

(C) other financial information and data available to the board.

(23) On page 45, strike lines 21 through 25 and substitute the following:

(b) At the time an application for financial assistance is considered, the board also must find that the area to be served by a proposed project has an average per capita income that is at least 25 percent below the state average for the most recent three consecutive years for which statistics are available.

(24) On page 46, lines 16, between the period and "The" insert "(a)".

(25) On page 46, between lines 19 and 20, insert the following:

(b) The board may make financial assistance available to political subdivisions in any other manner that it considers feasible including:

(1) contracts or agreements with a political subdivision for acceptance of financial assistance that establish any repayment based on the political

subdivision's ability to repay the assistance, and that establish requirements for acceptance of the assistance; or

(2) contracts or agreements for providing financial assistance in any federal or federally assisted project or program.

(26) On page 46, between lines 26 and 27, insert new Subsections (b) and (c) to read as follows:

(b) In determining the amount and form of financial assistance and the amount and form of repayment, if any, the board shall consider:

(1) rates, fees, and charges that the average customer to be served by the project will be able to pay based on a comparison of what other families of similar income who are similarly situated pay for comparable services;

(2) sources of funding available to the political subdivision from federal and private funds and from other state funds; and

(3) any local funds of the political subdivision.

(c) In making its determination under Subsection (b)(1) of this section, the board may consider any study, survey, data, criteria, or standard developed or prepared by any federal, state, or local agency, private foundation, banking or financial institution, or other reliable source of statistical or financial data or information.

(27) On page 46, line 27, strike "(b)" and insert "(d)".

(28) Renumber the sections of Article 2 accordingly.

(29) On page 48, line 8, after the semicolon insert "or".

(30) On page 48, strike lines 9 through 11.

(31) On page 48, line 12, strike "(C)" and substitute "(B)".

(32) On page 50, line 1, between "(1)" and "requires" insert "(A) or (B)".

(33) On page 59, line 14, after the semicolon insert "or".

(34) On page 59, strike lines 15 through 17.

(35) On page 59, line 18, strike "(C)" and insert "(B)".

(36) On page 61, line 7, between "(1)" and "requires" insert "(A) or (B)".

(37) Strike existing Article 4, beginning on page 73, line 5 and ending on page 80, line 9.

(38) On page 80, renumber existing Article 5 as Article 4.

(39) Renumber existing Sections 5.01 through 5.04 of the bill as Sections 4.01 through 4.04, respectively.

(40) On page 15, strike line 13 and substitute the following: "residential developments with tracts of one acre or less in the".

(41) On page 48, strike line 16 and substitute the following: "lots that are intended for residential purposes and are one acre".

(42) On page 59, strike line 22 and substitute the following: "lots that are intended for residential purposes and are one acre".

Amendment No. 2 - A. Moreno

Amend **C.S.S.B. 2** as follows:

(1) On page 13, line 21, between "area" and "for", insert "in an affected county".

(2) On page 14, lines 16 and 17, strike "to assure compliance with Chapters 212 and 232, Local Government Code, and".

(3) On page 14, line 18, between "areas" and the comma, insert "of political subdivisions".

(4) On page 15, line 16, immediately before "dwelling", insert "single-family detached".

(5) On page 15, between lines 20 and 21, insert the following:

(f) Notwithstanding any other law to the contrary, the only kind of county that may adopt the model rules is an affected county.

(6) On page 15, line 21, strike "(f)" and substitute "(g)".

(7) On page 15, lines 24 and 25, strike "model rules developed by the board under" and substitute "the model rules pursuant to".

(8) On page 19, strike lines 20 through 24 and substitute the following:

(c) On January 1 of each year, a

(9) On page 20, strike lines 5 and 6 and substitute the following: "payment of the fee and interest. The political".

(10) On page 20, line 9, strike "or obligation".

(11) On page 49, lines 4 through 6, and on page 60, lines 10 and 11, strike "standards and rules that are at least as strict as those adopted by the Texas Water Development Board under Section 16.342," and substitute at each of those locations "the model rules adopted under Section 16.343,".

(12) On page 49, lines 14 and 15, and on page 60, lines 20 and 21, strike "standards and rules adopted by the Texas Water Development Board under Section 16.342," and substitute at each of those locations "model rules adopted under Section 16.343,".

(13) On page 49, strike lines 19 through 23 and substitute the following: "facilities must be fully operable if the governing body finds the extension is reasonable and not contrary to the public interest. If the facilities are fully operable before the expiration of the extension period, the facilities are considered to have been made fully operable in a timely manner. An extension is not reasonable if it would allow a residence in the subdivision to be inhabited without water or sewer services.".

(14) On page 50 strike lines 19 through 21, on page 51 strike lines 5 through 7, on page 61 strike lines 25 through 27, and on page 62 strike lines 11 through 13 and substitute the following at each of those locations:

"(A) in compliance with the model rules adopted under Section 16.343, Water Code; and".

(15) At each of the following locations, between "subdivision" and the period, insert "or within any extension of that time":

(A) On page 50, line 23;

(B) On page 51, line 9;

(C) On page 62, line 2; and

(D) On page 62, line 15.

(16) On page 54 strike lines 24 through 26, and on page 66 strike lines 9 through 11 and substitute the following at each of those locations: "or installed to service a subdivision in compliance with the model rules adopted under Section 16.343, Water Code.".

(17) On page 60, strike lines 25 through 27, and on page 61, strike lines 1 and 2, and substitute the following: "be fully operable if the court finds the extension is reasonable and not contrary to the public interest. If the facilities are fully operable before the expiration of the extension period, the facilities are considered to have been made fully operable in a timely manner. An extension is not reasonable if it would allow a residence in the subdivision to be inhabited without water or sewer services.".

Amendment No. 3 - A. Moreno

Amend **C.S.S.B. 2** as follows:

(1) On page 19, between lines 19 and 20, insert the following:

(c) The distressed areas water financing fee or the lien securing the fee is not effective or enforceable until the governing body of the political subdivision has filed for recordation with the county clerk in each county in which any part of the political subdivision is located, and the county clerk has recorded and indexed, a

duly affirmed and acknowledged notice of imposition of the distressed areas water financing fee containing the following information:

(1) the name of the political subdivision;

(2) the date of imposition by the political subdivision of the distressed areas water financing fee;

(3) the year or years to which the distressed areas water financing fee applies; and

(4) a complete and accurate legal description of the boundaries of the political subdivision.

(2) On page 19, line 20, strike "(c)" and substitute "(d)".

(3) On page 19, line 27, between "lien" and "has" insert "shall be treated as if it were a tax lien and".

(4) On page 20, line 2, strike "(d)" and substitute "(e)".

(5) On page 20, line 16, strike "(e)" and substitute "(f)".

(6) On page 20, between lines 19 and 20, insert the following:

(g) A political subdivision shall, on the written request of any person and within five days after the date of the request, issue a certificate stating the amount of any unpaid distressed areas water financing fees, including interest on the fees, that have been imposed or assessed against a tract of property located in the political subdivision. The political subdivision may charge a fee not to exceed $10 for each certificate. A certificate issued through fraud or collusion is void.

Amendment No. 4 - Yost, Willy

Amend **C.S.S.B. 2** as follows:

(1) On page 46, line 27, strike "(b)" and substitute "(c)".

(2) On page 46, at the end of line 26, add the following:

(b) Upon a finding of fact of a nuisance dangerous to the public by the Texas Department of Health, the amount of financial assistance from the economically distressed areas account which is not repaid by a political subdivision may exceed 50% of the total principal and interest of the Board's bonds sold to fund the project. The amount of financial assistance from the economically distressed areas account which is not repaid, may not exceed 75% of the total principal and interest due from the bond authorization. A county in which an applicant resides must: (1) guarantee repayment of debt service according to the agreement that an applicant enters into with the Board or, at the discretion of the Board, (2) provide from local funds or other funds available to the county an amount equal to 2.5 percent of the total project cost, or $500,000, whichever is less.

Amendment No. 5 - Willy

Amend **C.S.S.B. 2** as follows:

(3) On page 27, line 6, strike "or" and substitute "counties, or other".

Floor Amendment No. 1 on Third Reading - A. Moreno

Amend **C.S.S.B. 2** on third reading as follows:

(1) Insert a new section 2.03 to read as follows and renumber succeeding sections accordingly:

SECTION 2.03. Chapter 15, Water Code, is amended by adding Section 15.007 to read as follows:

Sec. 15.007. CONSIDERATIONS FOR CERTAIN FINANCIAL ASSISTANCE. (a) If financial assistance is provided under Subchapter C or J of this chapter, any waste treatment facility to be financed under the application must consider cost-effective methods of treatment such as rock reed, root zone, ponding,

irrigation, or other nonconventional methods that may have been developed by the National Aeronautics and Space Administration or the Tennessee Valley Authority.

(b) Before granting an application for financial assistance under Subchapter C or J of this chapter, the board must find that any waste treatment facility to be financed under the application will consider cost-effective innovative methods of treatment such as rock reed, root zone, ponding, irrigation, or other nonconventional methods that may have been developed by the National Aeronautics and Space Administration or the Tennessee Valley Authority.

(2) In Section 17.189, Water Code, as added by the bill, at two locations in that section, immediately after "or other methods", insert "that may have been developed by the National Aeronautics and Space Administration or the Tennessee Valley Authority".

(3) In Section 17.893(b), Water Code, as added by the bill, immediately after "that an applicant enters into with the Board or,", insert "(2)", and strike "(2)" at its other location in Section 17.893(b).

Floor Amendment No. 2 on Third Reading - A. Moreno

Amend **C.S.S.B. 2** on third reading as follows:

(1) On page 46, between lines 26 and 27, insert new quoted Subsections (b), (c) and (d) as follows:

(b) In providing financial assistance to an applicant under this subchapter, the board may not provide to the applicant financial assistance for which repayment is not required in an amount that exceeds 50 percent of the total amount of the financial assistance plus interest on any amount that must be repaid, unless the Texas Department of Health issues a finding that a nuisance dangerous to the public health and safety exists resulting from water supply and sanitation problems in the area to be served by the proposed project. The board and the applicant shall provide to the Texas Department of Health information necessary to make a determination, and the board and the Texas Department of Health may enter into necessary memoranda of understanding to carry out this subsection.

(c) The total amount of financial assistance provided by the board to political subdivisions under this subchapter for which repayment is not required may not exceed at any time 75 percent of the total principal amount of issued and unissued bonds authorized under Article III, Section 49-d-7, of the Texas Constitution, for purposes of this subchapter plus outstanding interest on those bonds.

(d) The county in which an application is granted must, at the time the application is granted:

(1) guarantee repayment of debt service on the portion of bonds issued to provide the financial assistance according to the agreement entered into with the board by the project applicant or as provided by the board; or

(2) agree to pay from local funds or other funds available to the county an amount equal to 2.5 percent of the total project cost, or $500,000, whichever amount is less.

The amendments were read.

Senator Santiesteban moved to concur in the House amendments to **S.B. 2.**

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Parmer.

HOUSE BILL 1270 ON SECOND READING

On motion of Senator Green and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1270, Relating to providing for installment payments of ad valorem taxes imposed on the homestead of an elderly person.

The bill was read second time.

Senator Green offered the following committee amendment to the bill:

Amend **H.B. 1270** on page 1 by deleting lines 13 and 14 and substituting the following:

"installment must be paid before April 1, the second installment before June 1, and the third installment before August 1."

The committee amendment was read and was adopted viva voce vote.

On motion of Senator Green and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 1270 ON THIRD READING

Senator Green moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 1270** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Parmer.

The bill was read third time and was passed viva voce vote.

HOUSE JOINT RESOLUTION 19 ON SECOND READING

On motion of Senator Brown and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.J.R. 19, Proposing a constitutional amendment relating to the rights of crime victims to be informed of, to be present at, and to be heard at certain criminal proceedings.

The resolution was read second time and was passed to third reading viva voce vote.

HOUSE JOINT RESOLUTION 19 ON THIRD READING

Senator Brown moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.J.R. 19** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Parmer.

The resolution was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Parmer.

CONFERENCE COMMITTEE ON HOUSE BILL 983

Senator Parker called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 983** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on **H.B. 983** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Parker, Chairman; Haley, Truan, Barrientos and Brooks.

CONFERENCE COMMITTEE ON HOUSE BILL 1292

Senator Barrientos called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 1292** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on **H.B. 1292** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Barrientos, Chairman; Johnson, Parker, Edwards and Uribe.

COMMITTEE SUBSTITUTE HOUSE BILL 775 ON SECOND READING

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 775, Relating to the adjudication and disposition of children who engage in certain conduct involving the inhalation of certain substances, public intoxication, or driving while intoxicated or under the influence of drugs.

The bill was read second time.

Senator Zaffirini offered the following amendment to the bill:

Amend **C.S.H.B. 775** as follows:

(1) Strike Sections 3, 4, and 5 (Committee Printing page 2, line 15 through page 3, line 22) in their entirety.

(2) Renumber the subsequent sections appropriately.

The amendment was read and was adopted viva voce vote.

On motion of Senator Zaffirini and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

RECORD OF VOTE

Senator Glasgow asked to be recorded as voting "Nay" on the passage of the bill to third reading.

COMMITTEE SUBSTITUTE HOUSE BILL 775 ON THIRD READING

Senator Zaffirini moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 775** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 2.

Yeas: Armbrister, Barrientos, Bivins, Brooks, Brown, Caperton, Carriker, Dickson, Edwards, Green, Haley, Harris, Henderson, Johnson, Krier, Leedom, Lyon, McFarland, Montford, Parker, Ratliff, Santiesteban, Sims, Tejeda, Truan, Uribe, Whitmire, Zaffirini.

Nays: Glasgow, Washington.

Absent-excused: Parmer.

The bill was read third time and was passed viva voce vote.

RECORD OF VOTE

Senator Glasgow asked to be recorded as voting "Nay" on the final passage of the bill.

SENATE BILL 487 WITH HOUSE AMENDMENTS

Senator Brooks called **S.B. 487** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment No. 1 - Waterfield

Amend **S.B. 487** on page 13, line 17, by adding the following sentence: "At least one of the provider members shall be representative of a non-profit facility."

Committee Amendment No. 2 - Vowell

Amend **S.B. 487** as follows:

1. After Section 6, on page 5, line 20, add a new Section 7 to read as follows:

Section 7. Section 2(a) of Article 4442c, V.T.C.S., is amended to read as follows:

Sec. 2. (a) "Institution" means an establishment which furnishes (in single or multiple facilities) food and shelter to four or more persons unrelated to the proprietor, and, in addition, provides minor treatment under the direction and supervision of a physician licensed by the Texas State Board of Medical Examiners, or services which meet some need beyond the basic provision of food, shelter, and laundry. Nothing in this Act except as otherwise provided in this Act shall apply to:

(1) a hotel or other similar place that furnishes only food and lodging, or either, to its guests;

(2) a hospital;

(3) an establishment conducted by or for the adherents of any well-recognized church or religious denomination for the purpose of providing facilities for the care or treatment of the sick who depend exclusively upon prayer or spiritual means for

healing, without the use of any drug or material remedy, provided safety, sanitary, and quarantine laws and regulations are complied with;

(4) an establishment that furnishes only baths and massages in addition to food, shelter and laundry;

(5) an institution operated by persons licensed by the Texas State Board of Chiropractic Examiners;

(6) a facility operated within the jurisdiction of a state or federal governmental agency, including but not limited to the Texas Rehabilitation Commission, the Texas Department of Mental Health and Mental Retardation, the Texas Department of Human Services, the Texas Commission for the Blind, the Texas Commission on Alcohol and Drug Abuse, the Texas Department of Corrections, and the Veterans' Administration; where the facility is primarily engaged in training, habilitation, rehabilitation, or education of clients or residents, and such facility has been certified through inspection or evaluation as having met standards established by the state or a federal governmental agency; or

(7) a foster care type residential facility that serves fewer than five persons and operates under the rules adopted by the Texas Department of Human Services.

"Institution" also means a foster care type residential facility providing room and board to fewer than five persons unrelated within the second degree of consanguinity or affinity to the proprietor and who, in addition to room and board, because of his physical or mental limitation or both, requires a level of care and services suitable to the needs of the individual which contribute to his health, comfort, and welfare; provided, however, that such institution shall be subject to licensure only upon written application for participation in the intermediate care program provided by Federal law as it now reads or may hereafter be amended.

2. Renumber existing Section 7 as Section 8.

3. After new Section 8, add a new Section 9 to read as follows:

SECTION 9. Section 7B of Article 4442c, V.T.C.S., is amended by adding new subsection (k) to read as follows:

(k) The Licensing Agency may issue permits to employees of state and federal agencies listed in Sec. 2(a)(6) of this Act.

4. Renumber existing Section 8-14 as Sections 10-16.

Committee Amendment No. 2A - Kuempel

Amend Committee Amendment No. 2 to **S.B. 487** by adding the following after Subdivision (7) in amended Section 2 of Article 4442c:

"Institution" also means any place or establishment in or at which any person receives, treats or cares for, overnight or longer, within a period of twelve months, four or more pregnant women or women who have within two weeks prior to such treatment or care had a child born to them; provided, however, that this definition shall not include women who receive maternity care in the home of a relative within the third degree of consanguinity or affinity, nor shall it include general or special hospitals licensed in pursuance of or as those terms are defined in the Texas Hospital Licensing Law. Nothing in this Act shall be construed to prohibit an institution, as defined in this subdivision, from simultaneously caring for pregnant women and other women under 50 years of age.

Committee Amendment No. 3 - Melton

Amend Section 11A of **S.B. 487** REPORTS RELATING TO RESIDENT DEATHS by adding Subsection (c) to read as follows:

Records under this Section are confidential and not subject to the provisions of the Open Records Act, Article 7252-17a. However, licensed facilities shall make available historical statistics on all required information upon request of applicants or their representatives.

Committee Amendment No. 4 - Vowell

Amend Section 9 of **S.B. 487** INSPECTION AND CONSULTATIONS by adding the following paragraph:

The Texas Department of Health shall provide for a survey team to conduct surveys to validate or verify findings of licensure surveys. The purpose of the validation surveys is to assure that survey teams throughout the state survey in a fair and consistent manner. Facilities subjected to validation surveys will have to correct deficiencies cited by the validation team but will not be subject to punitive action for validation surveys.

Floor Amendment No. 1 - McDonald

Amend **S.B. 487** by adding a new SECTION 3 and SECTION 4 as follows and renumbering the succeeding Sections.

SECTION 3. Section 32.024, Human Resources Code, is amended by adding Subsection (f) to read as follows:

(f) The department shall provide home respiratory therapy services for ventilator-dependent persons to the extent permitted by federal law.

SECTION 4. Section 32.027, Human Resources Code, is amended by adding Subsection (c) to read as follows:

(c) A recipient of medical assistance that is authorized in this chapter may select for the provision of respiratory care therapy any person authorized to practice respiratory care under Chapter 829, Acts of the 69th Legislature, Regular Session, 1985 (Article 4512l, Vernon's Texas Civil Statutes). The department shall provide reimbursement to a person authorized to practice respiratory care under that Act, or licensed Health Care entity.

Floor Amendment No. 2 - McKinney

Amend **S.B. 487** by adding a new section to the bill, to be numbered appropriately, to read as follows and renumbering subsequent sections appropriately:

SECTION ___. The Texas Special Care Facility Licensing Act is enacted to read as follows:

Sec. 1.01. SHORT TITLE. This Act may be cited as the Texas Special Care Facility Licensing Act.

Sec. 1.02. DEFINITIONS. In this Act:

(1) "Board" means the Texas Board of Health.

(2) "Department" means the Texas Department of Health.

(3) "Medical care" means care that is:

(A) required for improving life span and quality of life, for comfort, for prevention and treatment of illness, and for maintenance of bodily and mental function;

(B) under the continued supervision of a physician; and

(C) provided by a registered nurse or licensed vocational nurse available to carry out a physician's plan of care for a resident.

(4) "Nursing care" means services provided by nursing personnel as prescribed by a physician, including services to:

(A) promote and maintain health;

(B) prevent illness and disability;

(C) manage health care during acute and chronic phases of illness;

(D) provide guidance and counseling of individuals and families; and

(E) provide referrals to physicians, other health care providers, and community resources when appropriate.

(5) "Person" means an individual, organization, establishment, or association of any kind.

(6) "Resident" means an individual accepted for care in a special care facility.

(7) "Services" means the provision of medical or nursing care, assistance, or treatment by facility personnel, volunteers, or other qualified individuals, agencies, or staff of any organization or entity to meet a resident's medical, nursing, social, spiritual, and emotional needs.

(8) "Special care facility" means an institution or establishment that provides a continuum of nursing or medical care or services, primarily to persons with acquired immune deficiency syndrome or other terminal illnesses. The term includes a special residential care facility.

Sec. 1.03. DUTIES OF BOARD. (a) The board shall adopt rules necessary to implement this Act. The rules shall establish minimum standards for special care facilities relating to:

(1) the issuance, renewal, denial, suspension, and revocation of the license required by this Act;

(2) the qualifications, duties, and supervision of professional and nonprofessional personnel and volunteers;

(3) residents' rights;

(4) medical and nursing care and services provided by a license holder;

(5) the organizational structure, lines of authority, delegation of responsibility, and operation of a special care facility;

(6) records of care and services kept by the license holder, including the disposal or destruction of those records;

(7) safety, fire prevention, and sanitary provisions;

(8) transfer of residents in a medically appropriate manner from or to a special care facility;

(9) construction plan approval and inspection; and

(10) any aspects of a special care facility as necessary to protect the public or residents of the facility.

(b) Subsection (a) of this section does not authorize the board to establish the qualifications of licensed health care providers or permit the board to authorize persons to provide health care services who are not authorized to provide those services under other state law.

Sec. 1.04. LICENSE REQUIRED; EXEMPTION. (a) A person may not establish or operate a special care facility unless the person holds a current license issued under this Act.

(b) This Act does not apply to:

(1) a person required to be licensed under the Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes);

(2) an institution required to be licensed under Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442c, Vernon's Texas Civil Statutes);

(3) a home health agency required to be licensed under Chapter 642, Acts of the 66th Legislature, Regular Session, 1979 (Article 4447u, Vernon's Texas Civil Statutes);

(4) a facility required to be licensed under the Texas Abortion Facility Reporting and Licensing Act (Article 4512.8, Vernon's Texas Civil Statutes);

(5) an ambulatory surgical center required to be licensed under the Texas Ambulatory Surgical Center Licensing Act (Article 4437f-2, Vernon's Texas Civil Statutes);

(6) a birthing center required to be licensed under the Texas Birthing Center Licensing Act (Article 4437f-3, Vernon's Texas Civil Statutes); or

(7) a person providing medical or nursing care or services under a license or permit issued under other state law.

Sec. 1.05. APPLICATION; LOCAL REGULATION; CONSTRUCTION. (a) An applicant for a license must submit an application to the department on a form prescribed by the department and in accordance with board rules.

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the board.

(c) The department may require that an application be approved by the local health authority or other local official for compliance with municipal ordinances on building construction, fire prevention, and sanitation.

(d) If there are no local regulations in effect or enforced in the area in which a special care facility is located, the facility's construction shall conform to the minimum standards established by the board.

(e) Construction of a facility is subject to construction plan approval by the department.

Sec. 1.06. LICENSE ISSUANCE; RENEWAL. (a) The department shall issue a license to an applicant if on inspection and investigation it finds that the applicant meets the requirements of this Act and the rules adopted by the board.

(b) A license shall be renewed at the times and in accordance with the rules established by the board.

Sec. 1.07. FEES; DISPOSITION OF FUNDS. (a) The board shall establish a license application fee in the amount of $25 for each facility bed or $200, whichever is greater, but the fees may not exceed $1,000.

(b) The board may establish other reasonable and necessary fees in amounts that are adequate, with the license application and license renewal fees, to collect sufficient revenue to meet the expenses necessary to administer this Act. The fees may include construction plan review and inspection fees.

(c) All fees collected under this Act are nonrefundable.

(d) All fees received by the department shall be deposited to the credit of the General Revenue Fund and may be appropriated only to the department to administer this Act.

Sec. 1.08. NONTRANSFERABILITY; POSTING. (a) A license issued under this Act is not transferable or assignable.

(b) A special care facility shall post in plain sight the license issued under this Act.

Sec. 1.09. INSPECTION; INVESTIGATION. (a) The department may inspect a special care facility and its records at reasonable times as necessary to ensure compliance with this Act.

(b) The department shall investigate each complaint received regarding a special care facility.

Sec. 1.10. LICENSE DENIAL, SUSPENSION, OR REVOCATION. (a) The department may deny, revoke, or suspend a license issued under this Act for a violation of this Act or the rules adopted under this Act.

(b) Except as provided by Subsection (c) of this section, the procedures by which the department denies, revokes, or suspends a license and by which those actions are appealed are governed by the department's rules for a contested case hearing and by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(c) The department may issue an emergency order to suspend any license issued under this Act if the department has reasonable cause to believe that the conduct of a license holder creates an immediate danger to the public health and safety. An emergency suspension is effective immediately without a hearing on notice to the license holder. On written request of the license holder, the department shall conduct a hearing not earlier than the 10th day and not later than the 30th day after the date on which the hearing request is received to determine if the emergency suspension is to be continued, modified, or rescinded. The hearing and any appeal are governed by the department's rules for a contested case hearing and the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

Sec. 1.11. INJUNCTION; CIVIL PENALTY. (a) The department may request that the attorney general petition a district court to restrain a license holder or other person from continuing to violate this Act or any rule adopted by the board under this Act. A suit for injunctive relief must be brought in Travis County.

(b) Upon application for injunctive relief and a finding that a license holder or other person has violated this Act or board rules, the district court shall grant the injunctive relief that the facts may warrant.

(c) In addition to a suit brought for injunctive relief under this section or any other remedy provided by law, a license holder or person who violates this Act or any rule adopted by the board under this Act is liable for a civil penalty, to be imposed by a district court, of not more than $1,000 for each day of violation. All penalties collected under this subsection shall be deposited to the credit of the General Revenue Fund.

Sec. 1.12. CRIMINAL PENALTY. (a) A person who knowingly establishes or operates a special care facility without a license issued under this Act commits an offense.

(b) An offense under this section is a Class B misdemeanor.

(c) Each day of a continuing violation constitutes a separate offense.

Floor Amendment No. 3 - Kuempel

Amend **S.B. 487** as follows:

(1) On page 15, line 11, between "established" and "to" insert "in the Health and Human Services Coordinating Council".

(2) On page 16, line 4, strike "commissioner of human services" and substitute "executive director of the Health and Human Services Coordinating Council".

Floor Amendment No. 1 on Third Reading - McDonald

Amend **S.B. 487** on third reading as follows:

(1) In Section 4, of the bill as added by Floor Amendment No. 5, in Subsection (c) in the last sentence between the words "Act," and "licensed", between "or" and "licensed" insert "a".

(2) In the same provision at the end of the last sentence strike the period "." and include the following ", or a physician licensed to practice medicine under the laws of this state."

Floor Amendment No. 2 on Third Reading - Guerrero

Amend **S.B. 487** by adding a new section ____ as follows:

Section 32.024, Human Resources Code, is amended by adding subsection (f) to read as follows:

(f) The department shall provide physical therapy services.

Section 32.027, Human Resources Code, is amended by adding subsection (c) to read as follows:

(c) The department shall permit a recipient of medical assistance under this chapter to receive services relating to physical therapy from any person authorized to practice physical therapy under Chapter 836, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512e, Vernon's Texas Civil Statutes).

The amendments were read.

On motion of Senator Brooks and by unanimous consent, the Senate concurred in the House amendments to **S.B. 487** viva voce vote.

SENATE CONCURRENT RESOLUTION 182

Senator Johnson offered the following resolution:

WHEREAS, The health and safety of nursing home residents is a vital concern to the legislature and the citizens of this state; and

WHEREAS, The Texas Department of Health is the state agency responsible for regulating nursing home facilities, including the investigation of deaths occuring in such facilities; and

WHEREAS, Statistical information maintained by the Department relating to deaths of nursing home residents should be available to any member of the public upon request; now, therefore, be it

RESOLVED, That the department assure accuracy in reporting the cause of death in a timely manner and assure that the family members of the deceased and health officials have access to this information; and, be it further

RESOLVED, That the 71st Texas Legislature hereby directs the department and the Texas Board of Health to consult with the Senate Committee on Health and Human Services and the House Human Services Committee in the promulgation of rules to implement the provisions of Senate Bill 487, 71st Legislature, Regular Session.

JOHNSON
EDWARDS
BROOKS

The resolution was read.

On motion of Senator Johnson and by unanimous consent, the resolution was considered immediately and was adopted viva voce vote.

CONFERENCE COMMITTEE ON HOUSE BILL 1232

Senator Harris called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 1232** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on **H.B. 1232** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Harris, Chairman; Henderson, Haley, Sims and Barrientos.

HOUSE BILL 312 ON SECOND READING

On motion of Senator Edwards and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 312, Relating to the membership of the Texas Board of Licensure for Nursing Home Administrators.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 312 ON THIRD READING

Senator Edwards moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 312** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Parmer.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Parmer.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 427 ADOPTED

Senator Edwards called from the President's table the Conference Committee Report on **S.B. 427**. (The Conference Committee Report having been filed with the Senate and read on Friday, May 26, 1989.)

On motion of Senator Edwards, the Conference Committee Report was adopted viva voce vote.

HOUSE BILL 535 ON SECOND READING

On motion of Senator Santiesteban and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 535, Relating to the adjudication and disposition of a child engaging in conduct indicating a need for supervision.

The bill was read second time.

Senator Santiesteban offered the following amendment to the bill:

Amend **H.B. 535** as follows:

(1) Strike Section 51.03(b)(1) (Committee Printing page 1, lines 24-30) and substitute the following:

(1) conduct, other than a traffic offense [~~and subject to Subsection (c) of this section~~], that violates Section 42.08, Penal Code, prohibiting public intoxication, or that on three or more occasions violates [~~either of the following~~]:

(A) the penal laws of this state of the grade of misdemeanor that are punishable by fine only; or

(B) the penal ordinances of any political subdivision of this state;

The amendment was read and was adopted viva voce vote.

On motion of Senator Santiesteban and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 535 ON THIRD READING

Senator Santiesteban moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 535** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Parmer.

The bill was read third time and was passed viva voce vote.

HOUSE BILL 2150 ON SECOND READING

On motion of Senator Brown and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2150, Relating to the counting of and instructions relating to certain ballots.

The bill was read second time.

Senator Johnson offered the following amendment to the bill:

Amend **H.B. 2150** by adding new SECTION 7 and renumbering all other sections accordingly:

SECTION 7. Section 277.002(a), Election Code, is amended to read as follows:

(a) For a petition signature to be valid, a petition must:

(1) contain in addition to the signature:

(A) the signer's printed name;

(B) the signer's voter registration number and, if the territory from which signatures must be obtained is situated in more than one county, the county of registration;

(C) the signer's residence address; and

(D) the date of signing, which may not be earlier than one year before the date the petition is filed; and

(2) comply with any other applicable requirements prescribed by law.

The amendment was read and was adopted viva voce vote.

Question - Shall the bill as amended be passed to third reading?

SENATE BILL 852 WITH HOUSE AMENDMENTS

Senator Edwards called **S.B. 852** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment - Campbell

SECTION 1. Section 465.003(c), Government Code, is amended to read as follows:

(c) At least one member must be a resident of Ellis County. At least two members must be scientists who are members of a nationally recognized scientific academy, board, or association. Not more than three members may be members of the faculty or administration of an institution of higher education in this state. To the extent possible, the members should represent all geographic areas of the state.

SECTION 2. Sections 465.008(d), (f), and (g), Government Code, as amended by **S.B. No. 223**, Acts of the 71st Legislature, Regular Session, 1989, are amended to read as follows:

(d) The commission has the power of eminent domain[~~, as provided by Chapter 21, Property Code,~~] to acquire real property, easements, or other property or interests in real property, easements, or other property, including fee simple interests with respect to the entirety of any real property, fee simple interests with respect to specified subsurface portions of any real property, and any lesser interests, as determined by the commission to be necessary or convenient to further the purposes of the commission in the manner prescribed by Chapter 21, Property Code. All real property, easements, and other property and interests in real property, easements, and other property acquired under this subsection are considered to have been acquired by the state as provided by Section 21.021(a), Property Code, for a public use. The real property, easements, and other property and interests in real property, easements, and other property acquired under this subsection may be the property of the state, a department or agency of the state, a county, a municipality, or another entity or subdivision of one of those entities. The commission may accept a donation of and may purchase real property, easements, or other property, including interests in real property, easements, or other property, as determined by the commission to be necessary or convenient to further the purposes of the commission, on the terms and in the manner the commission considers proper. The governing body of each state department or agency, county, municipality, or other entity or subdivision of one of those entities may donate, sell, lease, or otherwise convey real property, easements, and other property and interests in real property, easements, and other property to the commission to further its purposes, without advertisement and on the terms and conditions and in the manner the governing body considers proper. Payments received by a state department or agency that conveys real property, easements, or other property or interests in real property, easements, or other property to the commission shall be credited to an account of the department or agency as determined by the department or agency. The commission and its agents, employees, contractors, subcontractors, and designees may enter on any land to make surveys, perform core-drilling operations, or conduct other tests and evaluations with respect to the surface and the subsurface of the lands as the commission, its agents, employees, contractors, subcontractors, or designees consider necessary or convenient to further the purposes of the commission [~~in fee simple for the commission's use real property necessary and proper for carrying out its purposes~~].

(f) The commission may acquire by eminent domain, donation, purchase, [~~gift~~] or otherwise, hold, mortgage, encumber, and convey by gift or otherwise property or an interest in property, including a leasehold interest, in any manner the commission determines appropriate, and may encumber its property and pledge its revenues to secure its bonds. The commission may acquire or convey real property and improvements to the real property and may convey property or an interest in property, without the necessity of taking competitive bids.

(g) The commission may provide for the formation of one or more corporations [~~a corporation~~] under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) to assist in carrying out the purposes of this chapter. The commission may fund eligible undertakings determined by the commission to be in furtherance of the public purposes of this Act through the use as an intermediary of any one or more of those corporations. The commission may donate money or other property to one or more of those corporations and may enter agreements with one or more of those corporations [~~the corporation~~] as the commission considers appropriate to carry out those purposes.

SECTION 3. Section 465.008, Government Code, as amended by **S.B No. 223**, Acts of the 71st Legislature, Regular Session, 1989, is amended by adding Subsections (h) and (i) to read as follows:

(h) The commission may exercise any power necessary or useful in connection with an eligible undertaking, may perform any act necessary for the full exercise of the powers vested in the commission, and has the functions, powers, authority, rights, and duties that will permit accomplishment of the public purposes of this chapter.

(i) In exercising the power of eminent domain, if the commission or any entity used by the commission to assist in its exercising the power of eminent domain requires relocating, raising, lowering, rerouting, changing the grade, or altering the construction of any telegraph or telephone line, cable, conduit, pole, or facility, the commission must bear the actual cost of relocating, raising, lowering, rerouting, changing the grade, or altering the construction to provide comparable replacement without enhancement of facilities, after deducting the net salvage value derived from the old facility.

SECTION 4. Section 465.021, Government Code, as added by **S.B No. 223**, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

Sec. 465.021. DEFINITIONS. In this subchapter:

(1) "Bond" means any type of obligation under this chapter, including a bond, note, draft, bill, warrant, debenture, interim certificate, revenue or bond anticipation note, contract for the purchase of property, whether in the form of an installment purchase, conditional purchase, lease with option to purchase, or other form the commission considers appropriate, or other evidence of indebtedness.

(2) "Eligible undertaking" means any undertaking, whether or not capital in nature, that is described in, or is necessary to the fulfillment of offers made in the siting proposal described by Section 465.008(a) or is otherwise determined by the commission to have been made necessary or desirable to effect the siting, development, and operation [~~of the following that the commission determines is made necessary by the location~~] of the superconducting super collider research facility in the state[:

[~~(A) acquisition of land or an interest in land;~~

[~~(B) acquisition and construction of a building, an improvement, a structure, or utilities;~~

[~~(C) site preparation;~~

[~~(D) architectural, engineering, legal, and related services;~~

[~~(E) acquisition and installation of machinery, equipment, furnishings, and facilities; and~~

[~~(F) acquisition of a license, permit, or approval from a governmental entity~~].

(3) "Fund" means the superconducting super collider fund in the state treasury.

(4) "Revenue" means:

(A) revenue received by or on behalf of the commission in connection with the superconducting super collider or any eligible undertaking; and

(B) money appropriated to the commission by the legislature for the purpose of paying debt service on the commission's revenue bonds.

SECTION 5. Chapter 949, Acts of the 70th Legislature, Regular Session, 1987, is amended by inserting a new Section 5A following Section 5 to read as follows:

Sec. 5A. (a) A county may enter into a contract with an authority providing for periodic payment to be made by the county over more than one year only if the authority also enters into written contracts meeting the requirements of subsection (b) with at least two other counties.

(b) Each written contract executed pursuant to this Section must:

(1) be in substantially the same form, except as to the source and timing of funds to be paid pursuant to the contract;

(2) provide that funds or any amounts earned from the investment of those funds received by the authority pursuant to the contract may not be expended for payment of salary to an employee of the authority; and

(3) provide that funds received by the authority pursuant to the contract may only be used to pay or reimburse the costs of the acquisition of the land or interests in land or to pay expenses or other costs incidental to that acquisition.

(c) In determining whether one or more contracts in substantially the same form for purposes of this section, the fact that payments required to be made pursuant to a contract are determined on the basis of a uniform amount for each motor vehicle registered in the county may not be considered to make the contracts have a different form.

SECTION 6. Section 465.022, Government Code, as added by **S.B No. 223**, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

Sec. 465.022. BONDS AUTHORIZED. The commission may issue, sell, and deliver general obligation bonds of the state and revenue bonds and may use the proceeds of the bonds to carry out eligible undertakings, to make loans to fund or otherwise [or] fund eligible undertakings carried out by others, to pay the cost of interest on those bonds for the period specified in the resolution authorizing the bonds, to fund required reserves relating to the bonds, and to pay the costs of issuance of those bonds and the administration of the proceeds. The principal amount of general obligation bonds authorized by this section may not exceed $500 million and the principal amount of revenue bonds authorized by this section, which are payable from money appropriated to the commission by the legislature for that purpose, may not exceed $500 million.

SECTION 7. Section 465.024(b), Government Code, as added by **S.B No. 223**, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(b) Each revenue bond must contain on its face a statement to the effect that:

(1) neither the state nor any [an] agency, political corporation, or political subdivision of the state is obligated to pay the principal of or interest on the bonds except as provided by this subsection; and

(2) neither the faith and credit nor the taxing power of the state or any agency, political corporation, or political subdivision of the state is pledged to the payment of the principal of or interest on the bonds.

SECTION 8. Section 465.025(a), Government Code, as added by **S.B No. 223**, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(a) The bonds may be issued from time to time in one or more series or issues, in bearer, registered, or any other form, which may include registered uncertificated obligations not represented by written instruments and commonly known as book-entry obligations, the registration of ownership and transfer of which shall be provided for by the commission under a system of books and records maintained by the commission or by an agent appointed by the commission in a resolution providing for issuance of its bonds. The revenue bonds may be sold and delivered pursuant to a negotiated or competitive sale. The general obligation bonds may be sold pursuant to a competitive sale. The bonds may be sold and delivered at a price that may include an original discount or premium, all in the manner and under the terms, conditions, and details determined by the commission in the resolution authorizing their issuance. Bonds may mature serially or otherwise not more than 50 years from their date.

SECTION 9. Section 465.030, Government Code, as added by **S.B No. 223**, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

Sec. 465.030. REFUNDING. The commission may issue bonds to refund all or part of its outstanding bonds, including matured but unpaid interest, in the manner provided by other applicable statutes, including Chapter 503, Acts of the 54th Legislature, Regular Session, 1955 (Article 717k, Vernon's Texas Civil Statutes), and Chapter 784, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-3, Vernon's Texas Civil Statutes). If the provision for the payment of all interest and applicable premiums on and principal of revenue bonds issued under this subchapter has been made through the irrevocable deposit of money with the state treasurer as provided by an applicable statute, the amount of the revenue bonds may no longer be charged against the issuing authority of the commission, and on the making of that provision the issuing authority is restored to the extent of the principal amount of the revenue bonds.

SECTION 10. Section 465.032, Government Code, as added by **S.B No. 223**, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

Sec. 465.032. AUTHORIZATION CONTINGENCY AND LIMITATION. (a) The commission may not issue bonds before the Secretary of Energy or other officer of the United States government has signed a record of decision setting forth a [~~announced the final site selection~~] decision to locate a superconducting super collider in this state. However, the commission may enter into agreements with the United States government or others that will commit the commission to issue bonds for eligible undertakings conditioned on siting of the superconducting super collider in the state.

(b) The commission may not issue bonds after August 31, 1999 [~~1991~~].

SECTION 11. Chapter 231, Local Government Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. ZONING AROUND SUPER COLLIDER

Sec. 231.151. LEGISLATIVE FINDINGS; PURPOSE. (a) The legislature finds that:

(1) the federal Department of Energy intends to construct a superconducting super collider high-energy research facility in Ellis County;

(2) the construction of the super collider will promote the development and diversification of the state's economy and further the public health, safety, and general welfare of the residents of the entire state;

(3) the regulation of land use on and around the super collider site is necessary for the safe, efficient, and normal operation and maintenance of the super collider; and

(4) orderly development and use of the area in the environs of the super collider are of concern to the entire state.

(b) The powers granted under this subchapter are for the purposes of promoting:

(1) the public health, safety, peace, and general welfare; and

(2) the efficient and normal construction, operation, and maintenance of the super collider.

Sec. 231.152. AREAS SUBJECT TO REGULATION. (a) This subchapter applies to any unincorporated area of Ellis County within 10 miles of the site or a proposed site of the superconducting super collider or an appurtenant facility in which the commissioners court of that county determines that zoning regulations are necessary or desirable to carry out the purposes of this subchapter. The commissioners court may from time to time change a determination made under this subsection to enlarge, reduce, or otherwise change the unincorporated area in Ellis County that is subject to regulation under this subchapter.

(b) If the federal Department of Energy officially announces the cancellation of its plans to construct the super collider in Ellis County, this subchapter has no effect and any regulation adopted under this subchapter is void.

Sec. 231.153. ZONING REGULATIONS GENERALLY. The commissioners court of the county may regulate in areas subject to this subchapter:

(1) the height, number of stories, and size of buildings and other structures;

(2) the percentage of a lot that may be occupied;

(3) the size of yards, courts, and other open spaces;

(4) population density; and

(5) the location and use of buildings, other structures, and land for business, industrial, residential, or other purposes.

Sec. 231.154. DISTRICTS. (a) The commissioners court may divide the area in the county that is subject to this subchapter into districts of a number, shape, and size the court considers best for carrying out this subchapter. Within each district, the commissioners court may regulate the erection, construction, reconstruction, alteration, repair, or use of buildings or other structures, and the use of land.

(b) The zoning regulations must be uniform for each class or kind of building, with respect to each regulated land use and activity in a district, but the regulations may vary from district to district. The regulations shall be adopted with reasonable consideration, among other things, for the proximity to the super collider, for the character of each district, and the peculiar suitability for particular use of each district, with a view of conserving the value of buildings and encouraging the most appropriate use of land while accomplishing the purposes of this subchapter.

Sec. 231.155. PROCEDURES GOVERNING ADOPTION OF REGULATIONS AND DISTRICT BOUNDARIES. (a) The commissioners court by order shall establish procedures for adopting and enforcing zoning regulations and zoning district boundaries. A proposed zoning regulation or boundary is not effective unless a public hearing is called and held by the commissioners court on the matter and at which parties in interest and residents have an opportunity to be heard. Before the 15th day before the date of the hearing, the commissioners court must publish notice of the time and place of the hearing in a newspaper of general circulation in the county.

(b) If a proposed change to a regulation or boundary is protested in accordance with this subsection, the proposed change must receive, in order to take effect, the affirmative vote of at least three-fourths of all members of the commissioners court. The protest must be written and signed by the owners of at least 20 percent of either:

(1) the area of the land covered by the proposed change; or

(2) the area of the land adjacent to the area covered by the proposed change and extending 200 feet from that area.

(c) In computing the percentage of land under Subsection (b), the area of streets and alleys is included.

(d) A proposed change to a regulation or boundary that is not protested in accordance with this section must receive the affirmative vote of a majority of the members of the commissioners court in order to take effect.

Sec. 231.156. ZONING COMMISSION. (a) A zoning commission consisting of five members, each of whom must be a resident of the county, shall be appointed as follows:

(1) each county commissioner of the county shall appoint one member; and

(2) the county judge of the county shall appoint one member.

(b) A member of the zoning commission is appointed for a two-year term except that two of the initial members of the zoning commission appointed by two county commissioners designated by the county judge must be appointed for a one-year term.

(c) At the first meeting of the zoning commission, the commission shall choose by majority vote from among its members a chairman. The chairman serves in that capacity for a period set by the zoning commission that does not exceed the chairman's term on the commission. In the absence or unavailability of the chairman, the zoning commission may choose an acting chairman for a particular meeting or occasion from among its members.

(d) The commissioners court, for the use and benefit of the zoning commission, may employ a secretary, acting secretary, and other technical or clerical personnel and may employ or enter into contracts with private corporations and persons for professional services or other services as the commissioners court or the zoning commission considers appropriate to achieve the purposes of this subchapter.

(e) A member of the zoning commission may not receive compensation for service on the zoning commission. The member may be reimbursed for expenses actually incurred while serving on the zoning commission as provided by order of the commissioners court.

(f) The zoning commission shall recommend to the commissioners court boundaries for zoning districts and appropriate zoning regulations, if any, for each district. The zoning commission shall make a preliminary report with respect to the comprehensive zoning plan and hold public hearings on that report before submitting a final report to the commissioners court. The commissioners court may not hold a public hearing or take action until it has received the final report of the zoning commission. The final report must include appropriate engineering and geological studies, surveys of existing uses of affected areas, and other data that the commissioners court directs the zoning commission to consider.

(g) Before the 10th day before the hearing date, written notice of each public hearing before the zoning commission on a proposed change in a zoning classification shall be sent to:

(1) each owner of affected property or to the person who renders the property for county taxes; and

(2) each owner of property that is located within 200 feet of property affected by the change or to the person who renders the property for county taxes.

(h) The notice may be served by depositing it, postage paid and properly addressed, in the United States mail.

(i) In addition to the members of the zoning commission to be appointed under Subsection (a), the Texas National Research Laboratory Commission created under Chapter 465, Government Code, may designate an advisory member of the zoning commission, and the commissioners court may designate a liaison member of the zoning commission, but these members are advisory only and may not vote on matters before the zoning commission or exercise any power of the commission.

(i) The zoning commission shall endeavor to adopt a comprehensive zoning plan and zoning regulations before the first anniversary of the effective date of this subchapter.

Sec. 231.157. PERMITS. (a) The commissioners court by rule may require, with respect to one or more districts, that a permit be obtained before:

(1) a new structure is constructed;

(2) an existing structure is substantially changed or repaired;

(3) a new use is established;

(4) an existing use is substantially changed; or

(5) certain activities, as specified by rule by the zoning commission, are undertaken, including drilling, excavating, or blasting.

(b) A permit must be obtained from the board of adjustment or the zoning commission before a nonconforming structure may be replaced, rebuilt, or substantially changed or repaired.

(c) A permit may not allow the establishment of an activity, use, or structure that obstructs or interferes with the safe, efficient, and normal construction, operation, and maintenance of the super collider and related facilities, amenities, and appurtenances.

Sec. 231.158. BOARD OF ADJUSTMENT. (a) The commissioners court may provide for the appointment of a board of adjustment. The commissioners court by order may authorize the board of adjustment, in appropriate cases and subject to appropriate conditions and safeguards, to make special exceptions to zoning regulations adopted under this subchapter. The exceptions must be consistent with the general purpose and intent of the zoning regulations.

(b) The board of adjustment must consist of five members appointed for two-year terms, except that two initial members shall be appointed for a one-year term. The appointing authority may remove a member of the board of adjustment for cause on a written charge after a public hearing. A vacancy on the board of adjustment shall be filled for the unexpired term as provided by the commissioners court.

(c) The board of adjustment shall adopt rules in accordance with orders of the commissioners court adopted under this subchapter.

(d) The board of adjustment shall meet at the call of the chairman and at other times, as determined by the board of adjustment. The chairman or acting chairman may administer oaths and compel the attendance of witnesses. All meetings of the board of adjustment must be open to the public.

(e) The board of adjustment shall keep minutes of its proceedings that indicate the vote of each member on each question or the fact that a member is absent or fails to vote. The board of adjustment shall keep records of its examinations and other official actions. The minutes and records must be filed as soon as practicable after preparation in the board of adjustment's office and are public records.

Sec. 231.159. POWERS OF BOARD OF ADJUSTMENT. (a) The board of adjustment may:

(1) hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official in the enforcement of this subchapter or a zoning regulation;

(2) hear and decide a request for a special exception to a zoning regulation when the regulation requires the board of adjustment to do so; and

(3) except as otherwise provided in zoning regulations adopted under this subchapter, authorize in specific cases a variance from the terms of a zoning regulation if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the regulation would result in unnecessary hardship.

(b) In exercising its authority under Subsection (a)(1), the board of adjustment may reverse or affirm, in whole or in part, or modify the administrative official's order, requirement, decision, or determination from which an appeal is taken and make the correct order, requirement, decision, or determination, and for that purpose the board of adjustment has the same authority as the administrative official.

(c) The concurring vote of four members of the board of adjustment is necessary to:

(1) reverse an order, requirement, decision, or determination of an administrative official;

(2) decide in favor of an applicant on a matter on which the board of adjustment is required to pass under a zoning regulation; or

(3) authorize a variation in a zoning regulation.

Sec. 231.160. APPEAL TO BOARD OF ADJUSTMENT. (a) Any of the following persons may appeal to the board of adjustment a decision made by an administrative official under this subchapter or a rule adopted under this subchapter:

(1) a person aggrieved by the decision;

(2) any officer, department, board, or bureau of the county or of a municipality in the county affected by the decision; or

(3) the Texas National Research Laboratory Commission.

(b) To initiate the appeal, a person must file with the board of adjustment and the administrative official from whose decision the appeal is taken a notice of appeal specifying the grounds for the appeal. The appeal must be filed within a reasonable time after the official's decision, as determined by the rules of the board of adjustment. On receiving the notice, the official shall immediately transmit to the board of adjustment all the papers constituting the record of the action that is appealed.

(c) An appeal under this section stays all proceedings in furtherance of the action that is appealed unless the official from whom the appeal is taken certifies in writing to the board of adjustment facts supporting the official's opinion that a stay would cause imminent peril to life or property. In that event, the proceedings may only be stayed by a restraining order granted by the board of adjustment or a court of record on application, after notice to the official and due cause is shown.

(d) The board of adjustment shall set a reasonable time for the appeal hearing and give notice of the hearing to the public and individual notice to the parties in interest. A party may appear at the appeal hearing in person or by agent or attorney. The board of adjustment shall decide the appeal within a reasonable time.

Sec. 231.161. JUDICIAL REVIEW OF BOARD OF ADJUSTMENT DECISION. (a) Any of the following persons may present to a court of record having jurisdiction in the county a verified petition requesting review of a decision of the board of adjustment specifying the grounds of the request:

(1) a person aggrieved by a decision of the board of adjustment;

(2) a taxpayer who is a resident of the county;

(3) an officer, department, board, or bureau of the county or of a municipality in the county affected by the decision; or

(4) the Texas National Research Laboratory Commission.

(b) The petition must be presented within 10 days after the date the decision is filed in the board of adjustment's office.

(c) On the presentation of the petition, the court may order the board of adjustment to file an answer with the court on or before a date specified by the court, but not earlier than the 10th day after the date the board receives the order. The board shall file a copy of the answer with the petitioner on or before the date the answer is filed with the court.

(d) Judicial review of a decision under this section does not stay the proceedings on the decision under appeal, but on application and after notice to the board of adjustment the court may grant a restraining order if due cause is shown.

(e) The answer of the board of adjustment must be verified and must concisely state any pertinent and material facts that show the grounds of the decision under appeal. The board of adjustment is not required to return the original documents on which the board of adjustment acted but may return certified or sworn copies of the documents or parts of the documents as required by the court.

(f) If the court determines that testimony is necessary for the proper disposition of the matter, the court may take evidence or appoint a referee to take evidence as directed at a hearing on the matter. The referee shall report the evidence to the court with the referee's findings of facts and conclusions of law. The referee's report constitutes a part of the proceedings on which the court shall make its decision.

(g) The court may reverse or affirm, in whole or in part, or modify the decision that is appealed. Costs may not be assessed against the board of adjustment unless the court determines that the board acted with gross negligence, in bad faith, or with malice in making its decisions.

(h) If the court holds that a zoning regulation adopted under this subchapter interferes with the use or enjoyment of a particular structure or parcel of land to such an extent that, or is so onerous in its application to a particular structure or parcel of land that, the application of the regulation constitutes a taking or deprivation of property in violation of the state or federal constitution, that holding does not affect the application of the regulation to any other structure or parcel of land.

Sec. 231.162. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this subchapter or a rule or order adopted under this subchapter.

(b) Each day that a violation occurs constitutes a separate offense.

(c) An offense under this section is a Class B misdemeanor.

Sec. 231.163. INJUNCTION. The county, in a suit brought by the county attorney or other prosecuting attorney representing the county in district court, is entitled to appropriate injunctive relief to prevent the violation or threatened violation of an ordinance adopted under this chapter from continuing or occurring.

Sec. 231.164. CONFLICT WITH OTHER LAWS. (a) Except as provided by Subsections (d) and (e), if a zoning regulation, special exception or variance to a zoning regulation, permit, or order adopted, issued, or granted under this subchapter requires or imposes a higher or more restrictive standard than those required under a local order or regulation adopted by a municipality, the regulation adopted under this subchapter controls to the extent of conflict. Subject to Subsection (b), if the local order or regulation imposes a higher or more restrictive standard, that order or regulation controls to the extent of conflict.

(b) If a zoning regulation, special exception or variance to a zoning regulation, permit, or order adopted, issued, or granted by a research authority created in accordance with Chapter 949, Acts of the 70th Legislature, Regular Session, 1987 (Article 4413(47e), Vernon's Texas Civil Statutes), conflicts with a zoning regulation, special exception or variance to a zoning regulation, permit, or order adopted, issued, or granted under this subchapter or by a municipality in the county, the research authority zoning regulation, special exception or variance to a zoning regulation, permit, or order controls.

(c) Notwithstanding any other provision of this subchapter, a county may not adopt an ordinance in conflict with Article 5.43-4, Insurance Code, or a rule adopted under that article. An ordinance adopted in conflict with that article or those rules is void.

(d) This subchapter does not authorize a commissioners court to issue an order or regulation in conflict with a city ordinance or state agency rule pertaining to

billboards or outdoor advertising. An order or regulation issued in conflict with a city ordinance or state agency rule is void.

(e) The commissioners court may not regulate new manufactured or industrialized housing, constructed to preemptive state or federal building standards, for siting or zoning purposes in any manner that is different from regulation of site-built housing.

Sec. 231.165. REMOVAL, DESTRUCTION, OR CHANGE OF NONCONFORMING PROPERTY. The commissioners court of the county may not require the removal, destruction, or change of property that does not conform to a zoning regulation or order adopted under this subchapter unless the court makes the order in accordance with a plan that permits the property owner's investment in the nonconforming property to be amortized over a period of time, specified by the court.

SECTION 12. The Texas National Research Laboratory Commission may not issue bonds under Subchapter B, Chapter 465, Government Code, as amended by this Act, before September 1, 1991, unless the comptroller has determined that the total amount of debt service that the state will be required to pay during the biennium ending September 1, 1991, on those bonds and all other bonds previously issued under that subchapter will not exceed $26 million. On request of the comptroller, the commission shall provide the comptroller with information the comptroller considers necessary to make that determination. The comptroller shall submit the determination in writing to the commission and the bond review board.

SECTION 13. If, on the date that the governor makes the first appointment after the effective date of this Act to fill a vacancy on the Texas National Research Laboratory Commission, no member of that commission is a resident of Ellis County, the governor shall appoint a resident of Ellis County to fill the vacancy.

SECTION 14. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Amendment on Third Reading - A. Luna

Amend **S.B. 852** by striking lines 4 and 5 on page 13 and substituting in lieu thereof the following:

"superconducting super collider or an appurtenant facility in Ellis County in which the commissioners court of Ellis County determines that zoning"

The amendments were read.

Senator Edwards moved to concur in the House amendments to **S.B. 852**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Parmer.

COMMITTEE SUBSTITUTE HOUSE BILL 1929 ON SECOND READING

On motion of Senator Tejeda and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1929, Relating to the release of certain persons accused of misdemeanors without bail on the condition that they report to county court for arraignment at a later date and to the availability of release on personal bond.

The bill was read second time.

Senator Carriker offered the following amendment to the bill:

Amend **C.S.H.B. 1929** as follows:

(1) Delete Sections 2-9 and substitute the following:

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read and was adopted viva voce vote.

On motion of Senator Tejeda and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE
HOUSE BILL 1929 ON THIRD READING

Senator Tejeda moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 1929** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Parmer.

The bill was read third time and was passed viva voce vote.

COMMITTEE SUBSTITUTE
HOUSE BILL 1231 ON SECOND READING

On motion of Senator Brooks and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1231, Relating to the authority of a peace officer to make an arrest without a warrant for the criminal offense of violation of a court order and for the criminal offense of assault.

The bill was read second time and was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE
HOUSE BILL 1231 ON THIRD READING

Senator Brooks moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 1231** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Parmer.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Parmer.

COMMITTEE SUBSTITUTE HOUSE BILL 3164 ON SECOND READING

On motion of Senator Johnson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 3164, Relating to the membership of the board, management, and contracting authority of certain regional transportation authorities and to the withdrawal of a unit of election from those authorities.

The bill was read second time.

Senator Johnson offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 3164** by striking SECTION 1 in its entirety and substituting the following:

SECTION 1. Section 6(g), Chapter 683, Acts of the 66th Legislature, 1979 (Article 1118y, Vernon's Texas Civil Statutes), is amended to read as follows:

(g) The members of the board shall serve at the pleasure of the governing body of each appointing governmental entity, except that the governing body of each appointing governmental entity may not by rule, order, or ordinance limit the number of terms that members of the board may serve. The governing body shall confirm its board appointment to begin terms on the first day of September of each odd-numbered year.

The amendment was read and was adopted viva voce vote.

Senator Harris offered the following amendment to the bill:

Floor Amendment No. 2

Amend **C.S.H.B. 3164** as follows:

(1) On page 2, line 31, delete the word "eight" and substitute "fifteen".
(2) On page 2, line 35, insert a period after the word "petition" and strike the remainder of the sentence.

The amendment was read.

On motion of Senator Harris and by unanimous consent, the amendment was withdrawn.

On motion of Senator Johnson and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 3164 ON THIRD READING

Senator Johnson moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 3164** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Parmer.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Parmer.

SENATE BILL 1272 WITH HOUSE AMENDMENT

Senator Harris called **S.B. 1272** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Floor Amendment - A. Moreno

Amend **S.B. 1272** as follows:

(1) On page 1, between lines 3 and 4, insert a new Section 1 to read as follows:

SECTION 1. Section 5.12, Alcoholic Beverage Code, is amended to read as follows:

Sec. 5.12. CONCURRENT DUTIES OF ADMINISTRATOR. The commission shall specify the duties and powers of the administrator by printed rules and regulations entered in its minutes and shall develop and implement policies that clearly define the respective responsibilities of the administrator, the assistant administrator, and the staff of the commission. The commission or administrator may develop a procedure under which the commission or administrator, or the designee of either, may negotiate the repayment of debts owed the commission, including fees and delinquent taxes. When this code imposes concurrent powers or duties on the commission and the administrator, the commission shall designate those powers and duties which it delegates to the administrator. An order, decision, or judgment rendered and entered by the administrator in a matter in which the administrator [~~he~~] has been authorized to act is not subject to change, review, or revision by the commission. A concurrent power or duty which has not been specifically delegated to the administrator by the commission's order is retained by the commission, and an order, decision, or judgment rendered and entered by the commission in a matter in which the commission has retained authority is not subject to change, review, or revision by the administrator.

(2) On page 3, between lines 15 and 16, insert a new section, appropriately numbered, to read as follows:

SECTION ___. Chapter 28, Alcoholic Beverage Code, is amended by adding Section 28.15 to read as follows:

Section 28.15. RESTRICTIONS ON LOCATIONS. A mixed beverage permit or private club permit may not be issued for a premises if, on the effective date of this section, the premises is in a freestanding building which has within the 5 years immediately prior to the effective date of this section been used in the whole or in part as a church or place of religious worship."

(3) On page 4, between lines 6 and 7, insert three new sections, appropriately numbered, to read as follows:

SECTION 5. Subchapter D, Chapter 109, Alcoholic Beverage Code, is amended by adding Section 109.58 to read as follows:

Sec. 109.58. ASSIGNMENT OF CERTAIN TERRITORY TO DISTRIBUTOR. If a dry area adjacent to or in close proximity to a territory which has been assigned by a manufacturer or nonresident manufacturer to a distributor for a brand of beer becomes wet as to the sale of beer, and that distributor has lawfully provided services relating to that brand to one or more private club

permittees in that area for a period of not less than five years prior to the date on which the area becomes wet as to the sale of beer, then the holder of the manufacturer's or nonresident manufacturer's license of said brand of beer shall include the area in the territory assigned to that general, branch, or local distributor's licensee under Section 102.51 of this Code.

SECTION ___. Section 11.46(a), Alcoholic Beverage Code, is amended to read as follows:

Sec. 11.46. GENERAL GROUNDS FOR REFUSAL. (a) The commission or administrator may refuse to issue an original or renewal permit with or without a hearing if it has reasonable grounds to believe and finds that any of the following circumstances exists:

(1) the applicant has been convicted in a court of competent jurisdiction of the violation of any provision of this code during the two years immediately preceding the filing of his application;

(2) three years have not elapsed since the termination, by pardon or otherwise, of a sentence imposed on the applicant for the conviction of a felony;

(3) within the six-month period immediately preceding his application the applicant violated or caused to be violated a provision of this code or a rule or regulation of the commission which involves moral turpitude, as distinguished from a technical violation of the code or of the rule;

(4) the applicant failed to answer or falsely or incorrectly answered a question in an original or renewal application;

(5) the applicant is indebted to the state for any taxes, fees, or payment of penalty imposed by this code or by rule of the commission;

(6) the applicant is not of good moral character or his reputation for being a peaceable, law-abiding citizen in the community where he resides is bad;

(7) the applicant is a minor;

(8) the place or manner in which the applicant may conduct his business warrants the refusal of a permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency;

(9) the applicant is in the habit of using alcoholic beverages to excess or is physically or mentally incapacitated;

(10) the applicant will sell liquor unlawfully in a dry area or in a manner contrary to law or will knowingly permit an agent, servant, or employee to do so;

(11) the applicant is not a United States citizen or has not been a citizen of Texas for a period of three years immediately preceding the filing of his application, unless he was issued a permit or renewal permit on or before September 1, 1948, and has at some time been a United States citizen;

(12) the applicant does not have an adequate building available at the address for which the permit is sought;

(13) the applicant is residentially domiciled with a person whose permit or license has been cancelled for cause within the 12 months immediately preceding the date of his present application;

(14) the applicant has failed or refused to furnish a true copy of his application to the commission's district office in the district in which the premises for which the permit is sought are located; [or]

(15) during the six months immediately preceding the filing of the application the premises for which the permit is sought have been operated, used, or frequented for a purpose or in a manner that is lewd, immoral, or offensive to public decency; or[:]

(16) the location is unsuitable because of its proximity to and impact on a residential neighborhood.

(b) The commission or administrator shall refuse to issue an original permit authorizing the retail sale of alcoholic beverages unless the applicant for the permit

files with the application a certificate issued by the comptroller of public accounts stating that the applicant holds, or has applied for and satisfies all legal requirements for the issuance of, a sales tax permit, if required for the place of business for which the alcoholic beverage permit is sought.

(c) The commission or administrator shall refuse to issue for a period of one year after cancellation a mixed beverage permit or private club registration permit for a premises where two or more licenses and permits have been canceled during the preceding 12 months as a result of a shooting, stabbing, or other violent act, or as a result of an offense involving drugs.

SECTION ___. Section 61.43, Alcoholic Beverage Code, is amended to read as follows:

Sec. 61.43. DISCRETIONARY GROUNDS FOR REFUSAL: DISTRIBUTOR OR RETAILER. The county judge may refuse to approve an application for a license as a distributor or retailer if he has reasonable grounds to believe and finds that:

(1) the applicant has been finally convicted in a court of competent jurisdiction for the violation of a provision of this code during the two years immediately preceding the filing of his application;

(2) two years has not elapsed since the termination, by pardon or otherwise of a sentence imposed for conviction of a felony;

(3) the applicant has violated or caused to be violated a provision of this code or a rule or regulation of the commission, for which a suspension was not imposed, during the 12-month period immediately preceding the filing of his application;

(4) the applicant failed to answer or falsely or incorrectly answered a question in his original or renewal application;

(5) the applicant for a retail dealer's license does not have an adequate building available at the address for which the license is sought;

(6) the applicant or a person with whom he is residentially domiciled had an interest in a license or permit which was cancelled or revoked within the 12-month period immediately preceding the filing of his application;

(7) the applicant failed or refused to furnish a true copy of his application to the commission's district office in the district in which the premises sought to be licensed are located;

(8) the premises on which beer is to be sold for on-premises consumption does not have running water, if it is available, or does not have separate free toilets for males and females, properly identified, on the premises for which the license is sought;

(9) the applicant for a retail dealer's license will conduct his business in a manner contrary to law or in a place or manner conducive to a violation of the law; [or]

(10) the place, building, or premises for which the license is sought was used for selling alcoholic beverages in violation of the law at any time during the six months immediately preceding the filing of the application or was used, operated, or frequented during the time for a purpose or in a manner which was lewd, immoral, offensive to public decency, or contrary to this code; or[:]

(11) the location is unsuitable because of its proximity to and impact on a residential neighborhood.

(4) Renumber the remaining sections.

The amendment was read.

Senator Harris moved that the Senate do not concur in the House amendment, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on **S.B. 1272** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Harris, Chairman; Carriker, Whitmire, Ratliff and Haley.

SENATE BILL 558 WITH HOUSE AMENDMENT

Senator McFarland called **S.B. 558** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment - Hightower

Amend **S.B. 558** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Section 3, Chapter 696, Acts of the 70th Legislature, Regular Session, 1987 (Article 601d-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. TEXAS DEPARTMENT OF CORRECTIONS MASTER PLAN. Proceeds of bonds issued under this Act may not be distributed to the Texas Department of Corrections or otherwise used to finance a project of that department unless the department has submitted to the review board a master plan for construction of corrections facilities. The plan must be in the form, contain the information, and cover the period prescribed by the review board, but in any event must be revised annually.

SECTION 2. Subsection (a), Section 4, Chapter 696, Acts of the 70th Legislature, Regular Session, 1987 (Article 601d-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(a)(1) The authority may issue up to $500 million in general obligation bonds and distribute bond proceeds to appropriate agencies for use for acquiring, constructing, or equipping new facilities or for major repair or renovation of existing facilities, corrections institutions, including youth corrections institutions, and mental health and mental retardation institutions.

(2) The authority may issue up to $400 million in general obligation bonds, in addition to the amount authorized by Subsection (a)(1) of this section, and distribute bond proceeds to appropriate agencies for the same uses as authorized by Subsection (a)(1) and to the Department of Public Safety for the purchase, repair, and renovation of the Austin Independent School District administration building adjacent to the Department of Public Safety state headquarters, for the purpose of expanding the department's state headquarters' central office building.

(3) The bond proceeds may be used to refinance an existing obligation for a purpose described by this subsection. The authority may issue general obligation bonds to refund revenue bonds issued under this Act.

SECTION 3. Section 6, Chapter 696, Acts of the 70th Legislature, Regular Session, 1987 (Article 601d-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6. AMOUNT OF OUTSTANDING BONDS. At any one time, the combined amount of outstanding revenue bonds and outstanding general obligation bonds issued under this Act may not exceed $900 [~~$500~~] million.

SECTION 4. (a) This section applies to bond proceeds distributed for use by the Texas Department of Mental Health and Mental Retardation, the Texas

Department of Corrections, the Texas Youth Commission, or the Department of Public Safety.

(b) Proceeds of bonds authorized by this Act may not be used to finance a project unless the agency using the proceeds has submitted to the Legislative Budget Board specific plans for the project. If required by the General Appropriations Act, project plans must be approved by the Legislative Budget Board before the bond proceeds are expended.

SECTION 5. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 1989.

(b) Sections 2 and 4 of this Act take effect on the date on which the constitutional amendment proposed by **S.J.R. 24**, 71st Legislature, Regular Session, 1989, takes effect. If that amendment is not approved by the voters, Sections 2 and 4 of this Act have no effect. SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

Senator McFarland moved that the Senate do not concur in the House amendment, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on **S.B. 558** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators McFarland, Chairman; Caperton, Sims, Leedom and Brown.

SENATE CONCURRENT RESOLUTION 183

Senator McFarland offered the following resolution:

S.C.R. 183, Suspending the rules to allow conferees to go outside either house's version of **S.B. 558** and suspending printing and notice rules for the Conference Committee Report.

The resolution was read.

On motion of Senator McFarland and by unanimous consent, the resolution was considered immediately and was adopted viva voce vote.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1386 ADOPTED

Senator Bivins called from the President's table the Conference Committee Report on **S.B. 1386**. (The Conference Committee Report having been filed with the Senate and read on Friday, May 26, 1989.)

On motion of Senator Bivins, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Parmer.

SENATE BILL 187 WITH HOUSE AMENDMENTS

Senator Brown called **S.B. 187** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment No. 1 - Robnett

Amend **S.B. 187** as follows:

(1) On page 3, line 13, strike "76.002" and substitute "76.003".

(2) On page 3, between lines 18 and 19, insert the following:

Sec. 76.002. APPLICATION OF SUBTITLE. This subtitle applies to each statewide retirement system and to the optional retirement program governed by Chapter 36 of this title. This subtitle also applies to each other public retirement system for which the board of trustees of the system elects to adopt the provisions of this subtitle. An election under this section must be by order or resolution and need not set out the text of this subtitle. A board of trustees may not elect to adopt only part of this subtitle.

(3) On page 3, line 19, strike "76.002" and substitute "76.003".

(4) On page 4, line 3, between "system" and "to", insert "to which this subtitle applies and".

(5) On page 4, line 18, after "system", insert "to which this subtitle applies,".

(6) On page 6, line 16, between "system" and "or", insert "to which this subtitle applies".

(7) On page 9, line 3, between "1989" and the period, insert ", or after the date the board of trustees elects to adopt the provisions of this subtitle, whichever is later".

(8) On page 9, line 15, strike "76.003" and substitute "76.004".

(9) On page 9, line 17, between "system" and "may", insert "to which this subtitle applies".

(10) On page 10, line 16, between "system" and "of", insert "to which this subtitle applies".

(11) On page 12, line 3, between "system" and "shall", insert "to which this subtitle applies".

Committee Amendment No. 2 - Eckels

Amend Committee Amendment No. 1 to **S.B. 187** to read as follows:

Amend **S.B. 187** as follows:

(1) On page 3, line 13, strike "76.002" and substitute "76.003".

(2) On page 3, between lines 18 and 19, insert the following:

Sec. 76.002. APPLICATION OF CHAPTERS. This chapter and Chapter 78 of this subtitle apply to each statewide retirement system and to the optional retirement program governed by Chapter 36 of this title. This chapter and Chapter 78 also apply to each other public retirement system for which the board of trustees of the system elects to adopt the provisions of this chapter and Chapter 78. An election under this section must be by order or resolution and need not set out the text of this chapter or Chapter 78. A board of trustees may not elect to adopt only this chapter or Chapter 78.

(3) On page 3, line 19, strike "76.002" and substitute "76.003".

(4) On page 4, line 3, between "system" and "to", insert "to which this chapter applies and".

(5) On page 4, line 18, after "system", insert "to which this chapter applies,".

(6) On page 5, line 17, between "name" and "and", insert ", social security number,".

(7) On page 5, line 18, between "name" and "and", insert ", social security number,".

(8) On page 6, between lines 15 and 16, insert the following:

(g) A public retirement system may reject a domestic relations order as a qualified domestic relations order unless the order:

(1) provides for a proportional reduction of the amount awarded to an alternate payee in the event of the retirement of the member before normal retirement age;

(2) does not purport to require the designation of a particular person as the recipient of benefits in the event of a member's or annuitant's death;

(3) does not purport to require the selection of a particular benefit payment plan or option;

(4) provides clearly for each possible benefit distribution under plan provisions;

(5) does not require any action on the part of the retirement system contrary to its governing statutes or plan provision other than the direct payment of the benefit awarded to an alternate payee;

(6) does not make the award of an interest contingent on any condition other than those conditions resulting in the liability of a retirement system for payments under its plan provisions;

(7) does not purport to award any future benefit increases that are provided or required by the legislature; and

(8) provides for a proportional reduction of the amount awarded to an alternative payee in the event that benefits available to the retiree or member are reduced by law.

(9) On page 6, line 16, strike "(g)" and substitute "(h)".

(10) On page 6, line 16, between "system" and "or", insert "to which this chapter applies".

(11) On page 7, line 11, strike "(h)" and substitute "(i)".

(12) On page 7, line 20, strike "(i)" and substitute "(j)".

(13) On page 7, line 26, strike "(j)" and substitute "(k)".

(14) On page 8, line 14, strike "(k)" and substitute "(l)".

(15) On page 8, line 17, strike "(l)" and substitute "(m)".

(16) On page 8, line 23, strike "(j)" and substitute "(k)".

(17) On page 8, line 24, strike "(m)" and substitute "(n)".

(18) On page 9, strike lines 1-3.

(19) On page 9, line 15, strike "76.003" and substitute "76.004".

(20) On page 9, line 17, between "system" and "may", insert "to which this chapter applies".

(21) On page 10, strike lines 14-26 and on page 11, strike lines 1-24, and substitute the following:

Sec. 77.001. AUTHORITY TO REQUIRE SPOUSAL CONSENT. A public retirement system may adopt rules to require spousal consent for the selection of a service retirement annuity other than a joint and survivor annuity that pays benefits to the member's spouse on the death of the member, or for the selection of a death benefits plan that pays benefits in the form of an annuity to a person other than the member's spouse on the death of the member.

(22) On page 12, line 3, between "system" and "shall", insert "to which this chapter applies".

(23) On page 12, between lines 7 and 8, insert the following:

SECTION ___. Section 13.201(d), Title 110B, Revised Statutes, is amended to read as follows:

(d) Service credit earned with or allowed by more than one statewide retirement system for the same service [~~period of time~~] may be counted only once in determining the amount of a person's combined service credit.

SECTION ___. Section 23.201, Title 110B, Revised Statutes, is amended to read as follows:

Sec. 23.201. CURRENT SERVICE. Service is credited in the applicable membership class for each month in which a member holds a position and for which the required contributions are made by the member and the state. Service may not be credited in both membership classes for the same period unless one of the credits is for service established under Section 23.402 of this subtitle.

SECTION ___. This Act takes effect September 1, 1989, except that a public retirement system:

(1) shall treat a domestic relations order entered before the effective date of this Act as a qualified domestic relations order if the system is paying benefits pursuant to the order on that date; and

(2) may treat any domestic relations order entered before the effective date of this Act as a qualified domestic relations order even if the order does not meet all the requirements of this Act.

(24) Renumber sections of the bill as appropriate.

Floor Amendment No. 1 on Third Reading - Eckels

Amend **S.B. 187**, SECTION 1, Sec. 77.001 after the word "other", by adding "than the member's spouse on the death of a member."

Floor Amendment No. 2 on Third Reading - Schoolcraft

Amend **S.B. 187**, on page 3, line 12, by inserting the following after "system": ", which directs the public retirement system to disburse benefits to the alternate payee,".

The amendments were read.

Senator Brown moved to concur in the House amendments to **S.B. 187**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Parmer.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 55 ADOPTED

Senator Brown called from the President's table the Conference Committee Report on **S.B. 55**. (The Conference Committee Report having been filed with the Senate and read on Friday, May 26, 1989.)

On motion of Senator Brown, the Conference Committee Report was adopted viva voce vote.

(President in Chair)

SENATE BILL 410 WITH HOUSE AMENDMENTS

Senator Caperton called **S.B. 410** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment - Counts

Amend **S.B. 410** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Chapter 5, Insurance Code, is amended by adding Articles 5.06-5 and 5.35-1 to read as follows:

Art. 5.06-5. COVERAGES FOR SPOUSES AND FORMER SPOUSES. A Texas personal automobile policy or any similar policy form promulgated by the State Board of Insurance that covers liability arising out of ownership, maintenance, or use of a motor vehicle of a spouse, who is otherwise insured by the policy, shall contain a provision to continue coverage for the spouse during a period of separation in contemplation of divorce.

Art. 5.35-1. COVERAGES FOR SPOUSES AND FORMER SPOUSES. A homeowner's policy or fire policy promulgated under Article 5.35 of this code may not be delivered, issued for delivery, or renewed in this state unless the policy contains the following language: "It is understood and agreed that this policy, subject to all other terms and conditions contained in this policy, when covering residential community property, as defined by state law, shall remain in full force and effect as to the interest of each spouse covered, irrespective of divorce or change of ownership between the spouses unless excluded by endorsement attached to this policy until the expiration of the policy or until canceled in accordance with the terms and conditions of this policy."

SECTION 2. This Act takes effect September 1, 1989, and applies only to policies delivered, issued for delivery, or renewed on and after January 1, 1990. A policy delivered, issued for delivery, or renewed before January 1, 1990, is governed by the law that existed immediately before September 1, 1989, and that law is continued in effect for that purpose.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment - P. Hill

Amend **S.B. 410** as follows:

SECTION 1. Section 3B, Subparagraph (h), Article 3.51-6, Insurance Code, is amended to read as follows:

(h) Except as provided in Subsection (m) of this section, each health insurance policy shall require a member of the group to give written notice to the group policyholder within 15 days of any severance of the family relationship that might activate the continuation option under Subsection (b) of this section, and the group policyholder on receiving this notice shall immediately give written notice to each affected dependent of the continuation option; however, such written notice may be given by the group member's dependent. On receipt of notice of the death or retirement of a group member, the group policyholder shall immediately give written notice to the group member's dependents of the continuation option under Subsection (b) of this section. Such notice shall include a statement of the amount of the premium to be charged and shall be accompanied by any necessary enrollment forms.

SECTION 2. Section 3B, Subparagraph (i), Article 3.51-6, Insurance Code, is amended to read as follows:

(i) Within 60 [~~45~~] days from the severance of the family relationship or the retirement or death of the member of the group, the dependent must give written notice to the group policyholder of the desire to exercise the option under Subsection (b) of this section or the option expires. Coverage under the health insurance policy remains in effect during this 60 [~~45~~] day period provided the policy premiums are paid.

SECTION 3. Section 3B, Subparagraph (l), Article 3.51-6, Insurance Code, is amended to read as follows:

(l) If a person exercises the continuation option under Subsection (b) of this section, coverage of that person continues without interruption and may not be cancelled or otherwise terminated until:

(1) the insured fails to make a premium payment in the time required to make that payment;

[~~(2) the insured establishes residence outside the state;~~]

(2) [~~(3)~~] the insured becomes eligible for substantially similar coverage under another health insurance policy, hospital or medical service subscriber contract, medical practice or other prepayment plan, or by any other plan or program; or

(3) [~~(4)~~] a period of three years [~~one year~~] has elapsed since the severance of the family relationship or the retirement or death of the member of the group.

The amendments were read.

On motion of Senator Caperton and by unanimous consent, the Senate concurred in the House amendments to **S.B. 410** viva voce vote.

SENATE BILL 769 WITH HOUSE AMENDMENT

Senator Caperton called **S.B. 769** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment - McWilliams

Amend **S.B. 769** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Section 1.03, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended by adding Subdivision (10) to read as follows:

(10) "Select-use Technologies" means technologies which involve simultaneous combustion of natural gas with other fuels in fossil fuel-fired boilers. Such technologies include but are not limited to co-firing, gas reburn, and enhanced gas reburn/sorbent injection.

SECTION 2. Section 3.10, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3.10. (a)(1) A rule or regulation, or any amendment thereof, adopted by the board may differ in its terms and provisions as between particular conditions, particular sources, and particular areas of the state. In adopting rules and regulations, the board shall give due recognition to the fact that the quantity or characteristic of air contaminants or the duration of their presence in the atmosphere, which may cause a need for air control in one area of the state, may not cause need for air control in another area of the state, and the board shall take into consideration, in this connection, all factors found by it to be proper and just including existing physical conditions, topography, population, and prevailing wind directions and velocities, and the fact that a rule or regulation and the degrees of conformance therewith which may be proper as to an essentially residential area of the state may not be proper either as to a highly developed industrial area of the state or as to a relatively unpopulated area of the state.

(2) In adopting rules and regulations, the board shall encourage and may allow the use of natural gas and other alternative fuels, as well as select-use technologies, which will reduce emissions. Any orders or determinations made under Section 3.10(a)(2) shall be consistent with Section 3.13 of this Act.

(b) Except as provided in Subsections (a)(2), (c), (d), (e), and (f) of this section, the rules and regulations may not specify any particular method to be used to

control or abate air pollution, nor the type, design or method of installation of any equipment to be used to control or abate air pollution, nor the type, design, or method of installation or type of construction of any manufacturing processes or other kinds of equipment.

(c) The board is authorized to adopt rules and regulations to control and prohibit the outdoor burning of waste and combustible material. The board may include in the rules and regulations and requirements as to the particular method to be used to control or abate the emission of air contaminants resulting from the outdoor burning of waste or combustible material.

(d) The board may include in the rules and regulations requirements as to the particular method to be used to control and reduce emissions from motors and engines used in propelling land vehicles. Any rules or regulations pursuant to this paragraph shall be consistent with provisions of federal law, if any, relating to the control of emissions from the vehicles concerned.

(1) Notwithstanding the provisions of subsection (d)(6) of this Section, the board shall adopt rules applicable to consolidated metropolitan statistical areas or metropolitan statistical areas with populations of 350,000 or more, which have not met federal ambient air quality standards for ozone, carbon monoxide, oxides of nitrogen, or particulates. The rules shall require that each metropolitan rapid transit authority, as created under Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes); each regional transportation authority, as created under Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas Civil Statutes); and each city transportation department, as created under Article 1118z, Revised Statutes, ensure that its vehicles be capable of running on compressed natural gas or other alternative fuels which result in comparably lower emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, or particulates or any combination thereof, according to the following schedule:

(A) 30 percent or more of its fleet vehicles operating by September 1, 1994;

(B) 50 percent or more of its fleet vehicles operating by September 1, 1996; and

(C) contingent on the board's review of this alternative fuels program by December 31, 1996, and determination that the program is reducing emissions and is projected to be effective in improving overall air quality and is necessary to the attainment of federal ambient air quality standards in the affected areas, 90 percent of its fleet vehicles operating by September 1, 1998, and thereafter. Any determination made under Section 3.10(d)(1)(C) shall be consistent with Section 3.13 of this Act.

(2) If the board has determined that this alternative fuels program is reducing emissions and is projected to be effective in improving overall air quality and is necessary to the attainment of federal ambient air quality standards for ozone, carbon monoxide, oxides of nitrogen, or particulates in the affected areas, then the board shall adopt additional rules requiring local governments operating fleets of more than 15 vehicles (except for law enforcement and emergency vehicles) primarily in such areas and private persons and entities with fleets of more than 25 vehicles (except for emergency vehicles) operating primarily in such areas to ensure that such vehicles be capable of running on compressed natural gas or other alternative fuels which reduce total annual emissions from motor vehicles in the area, according to the following schedule:

(A) 30 percent or more of such fleet vehicles operating by September 1, 1998;

(B) 50 percent or more of such fleet vehicles operating by September 1, 2000; and

(C) 90 percent or more of such fleet vehicles operating by September 1, 2002.

For the purposes of this subsection, the term "fleet vehicles" includes only vehicles required to be registered under Article 6675a-2, Vernon's Texas Civil Statutes. Any determinations made under Section 3.10(d)(2) shall be consistent with Section 3.13 of this Act.

(3) Each such rule adopted by the board shall require each person and entity converting its vehicles to comply with all applicable federal and state safety standards and may take into consideration other applicable rules. The percentage requirements of this section may be met through the dual fuel conversion or capability of gasoline- or diesel-powered vehicles to operate also on compressed natural gas or other alternative fuels which result in comparably lower emissions. The board may make exceptions to its rules where a firm engaged in fixed price contracts with public works agencies can demonstrate that compliance with the requirements of this subsection would result in substantial economic harm to such a firm under a contract entered into prior to September 1, 1997. The board may make exceptions to its rules where the board determines that the affected vehicles will be operating primarily in an area which does not have or cannot reasonably be expected to establish a central refueling station available for providing alternative fuels. The board may also make an exception to the requirements of the rules adopted under this subsection where the affected entity is unable to secure financing provided by or arranged through the proposed supplier or suppliers of compressed natural gas or other alternative fuels sufficient to cover any additional costs attributable to such alternative fueling.

(4) To qualify for the exceptions provided for in this subsection, the affected entity shall provide such data as requested by the board to document the unavailability of a refueling station or of financing to cover any additional costs of such alternative fueling. The affected entities shall also support the board in collecting reasonable information needed to determine air quality benefits from use of alternative fuels in affected areas.

(5) The board shall not require, as a condition precedent to the initial sale of a vehicle or vehicular equipment the inspection, certification or other approval of any feature of equipment designed for the control of emissions from motor vehicles, if that feature or equipment has been certified, approved or otherwise authorized pursuant to federal law. The board or any other state agency may not adopt a rule or regulation requiring the use of Stage II vapor recovery systems that control motor vehicle refueling emissions at any gasoline dispensing facility in this state until the United States Environmental Protection Agency determines that the use of the system is required for compliance with the federal Clean Air Act.

(6) In conjunction with the development of State Implementation Plans for attaining and maintaining federal ambient air quality standards pursuant to the federal Clean Air Act, the board shall for areas required by federal law to have state implementation plans evaluate and determine the effectiveness of and need for the use of compressed natural gas and other alternative fuels in vehicles. This evaluation and determination shall include the uses of compressed natural gas or other alternative fuels as required elsewhere in this subsection as well as additional and/or different uses of compressed natural gas or other alternative fuels. In those instances where the board receives reports on alternative fuels programs, the board shall review this information in making its evaluations and determinations under this paragraph. The board shall also consult with the reporting entities on the contribution their program is making toward attaining and maintaining federal ambient air quality standards. In making evaluations and determinations regarding the use of compressed natural gas or other alternative fuels, the board shall consider

for each category of vehicles the same factors required for the development of State Implementation Plans under the federal Clean Air Act and this Act. Prior to making its determinations under this Subsection and Subsection (d)(2) of this Section, the Board shall solicit comments from the Department of Public Safety and the Railroad Commission concerning any effect on public safety. After considering these factors and determining that the use of compressed natural gas or other alternative fuels for certain categories of motor vehicles is effective and necessary for attaining and maintaining federal ambient air quality standards, the board shall develop appropriate rules requiring such uses in addition to those required elsewhere in this subsection. When the board determines such uses are appropriate considering the factors listed in this subsection, the board is also authorized to establish and implement programs encouraging the use of compressed natural gas or other alternative fuels for certain categories of vehicles. In connection with the evaluations and determinations required under this subsection and encouraging the use of natural gas or other alternative fuels, the board is authorized to conduct or have conducted appropriate studies or pilot programs. Such studies or pilot programs may include an assessment of the feasibility of adopting vehicle emission standards more stringent than those promulgated by the United States Environmental Protection Agency as allowed under the federal Clean Air Act. The board shall every two years prepare a report on their evaluations and determinations on the use of compressed natural gas or other alternative fuels and make recommendations on limitations to or expansions of the requirements of this act or other statutes necessary for the implementation of an effective and feasible program for the use of compressed natural gas and other alternative fuels. This report shall be submitted to the Governor and the Legislature 30 days before the commencement of each regular legislative session. Any action taken under Section 3.10(d)(6) shall be consistent with Section 3.13 of this Act.

(e) The board, when it deems control of air pollution is necessary, shall establish rules concerning the control of emissions of particulate matter from plants handling, loading and unloading, drying, manufacturing, and processing the following agricultural products: grain, seed, legumes and vegetable fibers, according to a formula derived from the process weight of the materials entering the process. Any person affected by a rule issued under the authority of this subsection may use the process weight method for controlling and measuring the emissions from the plant, or any other method selected by that person which the board or the executive director, when so authorized by the board, finds will provide adequate emission control efficiency and measurement.

(f) The board is authorized to prescribe the sampling methods and procedures which shall be used in determining violations of and compliance with the rules, regulations, variances, and other orders of the board. The board may prescribe ambient air sampling, stack-sampling, visual observation, or any other sampling method or procedure generally recognized in the field of air pollution control. The board may also prescribe new sampling methods and procedures when, in the judgment of the board, existing methods or procedures are not adequate to meet the needs and objectives of the rules, regulations, variances and other orders of the board, and where the scientific applicability of the new methods or procedures can be satisfactorily demonstrated to the board.

SECTION 3. Subchapter C, Texas Clean Air Act (Article 4477-5 Vernon's Texas Civil Statutes), is amended by adding Subsection 3.32 to read as follows:

Sec. 3.32. (a) The board shall levy a $.20 per MMBtu clean fuel incentive surcharge on fuel oil used in all industrial and utility boilers capable of using natural gas between April 15 and October 15 of each year for such boilers located in consolidated metropolitan statistical areas or metropolitan statistical areas with

populations of 350,000 or more, which have not met federal ambient air quality standards for ozone.

(b) However, the burning of waste oils, used oils, and hazardous waste-derived fuels for purposes of energy recovery or disposal is exempt from the clean fuel incentive surcharge established by Subsection (a) of this section provided that such burning activities are approved or permitted by the Texas Air Control Board, Texas Water Commission and/or the United States Environmental Protection Agency.

(c) The board shall not levy the clean fuel incentive surcharge provided in Subsection (a) of this section for fuel oil used during any period of full or partial natural gas curtailment or during any period when there is a failure to deliver sufficient quantities of natural gas to satisfy contractual obligations to the purchaser thereof or in the event of catastrophic events as defined by Subsection (c) of Section 3.272 of this Act.

(d) The board shall not levy the clean fuel incentive surcharge provided in Subsection (a) of this section on a boiler where fuel oil is used in equipment testing or personnel training up to an aggregate of the equivalent of 48 hours full-load operation between April 15 through October 15.

(e) The board shall not levy the clean fuel incentive surcharge provided in Subsection (a) of this section on any firm engaged in fixed price contracts with public works agencies for contracts entered into prior to the effective date of this Act.

(f) All funds collected under Subsection (a) of this section shall be deposited to the general revenue fund of the State of Texas.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Caperton and by unanimous consent, the Senate concurred in the House amendment to **S.B. 769** viva voce vote.

HOUSE BILL 1458 ON SECOND READING

On motion of Senator Santiesteban and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1458, Relating to the protection of groundwater in the state and to the creation, powers, and duties of the Texas Groundwater Protection Committee.

The bill was read second time.

Senator Santiesteban offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **H.B. 1458** by inserting "(a)" between the words "PLANS." and "the" on line 20, page 6 and adding the following subsections after line 26 on page 6:

(b) Any agency represented on the committee shall be eligible to receive and spend federal funds for its participation in the development of such management plans.

(c) Nothing in this section shall be construed as limiting any authority granted in statute to any other state agency for the regulation of agricultural chemicals and agents.

The committee amendment was read and was adopted viva voce vote.

Senator Santiesteban offered the following committee amendment to the bill:

Committee Amendment No. 2

Amend **H.B. 1458** as follows:

(1) On page _____, between lines _____ and _____, insert a new Section _____ to read as follows:

SECTION ___. Title 2, Subtitle A, Water Code, is amended by adding Chapter 7 to read as follows:

CHAPTER 7. TEXAS WATER RESOURCES COORDINATING COUNCIL

Sec. 7.001. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Water Development Board.

(2) "Commission" means the Texas Water Commission.

(3) "Council" means the Texas Water Resources Coordinating Council.

(4) "Executive director" means the executive director of the council.

(5) "Regional water authority" means:

(A) a river authority; or

(B) a district or authority created by an entity pursuant to Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution that has the authority or duty under state law to develop plans for flood control, water development, or water resources management for all or part of a river basin in this state.

Sec. 7.002. COUNCIL. The Texas Water Resources Coordinating Council is established as an advisory coordinating council of state government with primary responsibility to improve interagency coordination in policy matters relating to management of the state's water resources.

Sec. 7.003. GENERAL DUTIES AND RESPONSIBILITIES. (a) The council shall:

(1) regularly review state water resources management policy and make recommendations to the affected agencies and the legislature relating to that policy;

(2) conduct studies of significant water resources management issues involving the activities of multiple agencies that may include needs assessments, monitoring and tracking programs among agencies, cost analyses, forecasting, consideration of current problems, long-term results of programs, and coordination of water resources management activities;

(3) advise state agencies, regional water authorities, and units of local government concerning state water resources management policy;

(4) advise the board on specific policies for inclusion in the Texas water plan, provided the Texas water plan remains the responsibility of the board;

(5) review existing and proposed actions and policies of federal agencies to determine their impact on Texas water resources and recommend to the federal government, the governor, the legislature, and the affected agencies alternative actions and policies consistent with state water resources policy;

(6) mediate and resolve policy disputes among state agencies with responsibilities relating to water resources management in matters pending in congress, federal agencies, and the federal courts; and

(7) propose guidelines for sharing and integrating information among affected state agencies and regional water authorities relating to the state's water resources.

(b) The affected state agencies shall adopt the guidelines proposed by the council and may enter into memoranda of understanding between the agencies to implement those guidelines.

Sec. 7.004. CONSTRUCTION OF CHAPTER. This chapter shall be liberally construed to allow the council and the executive director to carry out their authority in an efficient and effective manner.

Sec. 7.005. MEMBERSHIP. (a) The council consists of:

(1) the governor;

(2) the lieutenant governor;

(3) the speaker of the house of representatives;

(4) the chairman of the commission;

(5) the chairman of the board;

(6) the chairman of the Railroad Commission of Texas;

(7) the chairman of the Texas Board of Health;

(8) the commissioner of the Department of Agriculture;

(9) the chairman of the Parks and Wildlife Commission; and

(10) a representative of a regional water authority who shall be appointed by and serve at the pleasure of the governor.

(b) The governor is the chairman of the council and shall preside at council meetings at which he is present. The lieutenant governor is the vice-chairman of the council and shall preside at council meetings at which he is present and at which the governor is absent. The speaker shall preside at council meetings at which he is present and at which the governor and lieutenant governor are absent.

(c) A majority of the council constitutes a quorum.

(d) Members of the council may not designate alternates to represent them in council meetings.

(e) A member of the council is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the council. The speaker of the house shall be reimbursed from the appropriate fund of the house of representatives. Other members shall be reimbursed from the funds of the office or agency in which the member serves.

Sec. 7.006. EXECUTIVE DIRECTOR. The council shall hire an executive director who shall perform duties and may exercise authority at the council's direction.

Sec. 7.007. MEETINGS; WORK PLAN; ORGANIZATION. (a) The council shall meet at least one time in each calendar quarter and at the call of the chairman.

(b) The council shall develop and implement a work plan for each state biennium.

(c) The council may receive and spend grants and donations from public and private entities and may contract with public or private entities to perform its responsibilities.

(d) The council may create administrative divisions and hire staff necessary to carry out council functions.

(e) The council shall file a report with the legislature concerning the activities of the council on or before December 1 of each even-numbered year.

Sec. 7.008. ADVISORY COMMITTEES. (a) The council may appoint or designate advisory committees that may be composed of agency representatives, public officials, and private citizens to advise the council. Appointments to the committees shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

(b) A member of an advisory committee is not entitled to compensation for services performed as a member of the committee. A member is entitled to reimbursement from council funds for actual and necessary expenses incurred in attending meetings of the advisory committee.

Sec. 7.009. GIFTS AND GRANTS. (a) The council may accept on behalf of the state a gift, grant, or donation from any source to be used to administer the council's functions and activities.

(b) The executive director shall deposit any money received under Subsection (a) of this section in the state treasury to the credit of a special fund to be called the water resources coordinating council fund. The money in that fund may be used only to administer the council's functions and activities.

(2) Renumber the remaining sections of the bill accordingly.

The committee amendment was read and was adopted viva voce vote.

Senator Santiesteban offered the following amendment to Committee Amendment No. 1:

Amend Amendment No. 1 to **H.B. 1458** by adding to the end of subsection (b) the following sentence:

Receipt of such funds shall have no effect on whether the agency in receipt of the funds is the lead agency for water issues in this state.

Strike subsection (c) in its entirety.

The amendment was read and was adopted viva voce vote.

On motion of Senator Santiesteban and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 1458 ON THIRD READING

Senator Santiesteban moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 1458** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Parmer.

The bill was read third time and was passed viva voce vote.

SENATE CONCURRENT RESOLUTION 165 WITH HOUSE AMENDMENTS

Senator Sims called **S.C.R. 165** from the President's table for consideration of the House amendments to the resolution.

The President laid the resolution and the House amendments before the Senate.

Floor Amendment - Parker

Amend **S.C.R. 165** by striking everything below line 1 and substituting the following:

WHEREAS, E. H. Brainard and others allege that:

(1) the patented field notes for the following surveys call for a common boundary with the Canadian River:

Sections 2, 3, 4, 5, 6, 7, 8, and 9, Block A, H&GN Ry Co Survey, Roberts County

Sections 10, 11, 12, 13, 14, 15, and 16, Block A, H&GN Ry Co. Survey, Roberts County

Sections 15, 16, 23, 24, 25, 26, 33, 34, 35, 36, 37, 38, 39, and 40, Block A, H&GN Ry Co. Survey, Roberts County

Sections 1, 2, 9, 10, 11, 12, 13, 14, 15, and 16, Block E, H&GN Ry Co. Survey, Hutchinson and Roberts counties
Sections 1, 2, 3, and 4, Block G, H&GN Ry Co Survey, Hutchinson County
Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13, Block 47, H&TC RR Co Survey, Hutchinson County
Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, and 32, Block 46, H&TC Ry Co. Survey, Roberts County
Sections 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, and 51, Block 46, H&TC Ry Co. Survey in Hutchinson County; and

(2) there is confusion and uncertainty as to the location of the boundary line between those surveys and the Canadian River and as a result there is a dispute as to the ownership of surface and minerals between the state and the riparian owners that can only be resolved by judicial action to determine and establish the boundary between the Canadian River and the riparian surveys under present conditions in a court of competent jurisdiction; now, therefore, be it

RESOLVED by the Legislature of the State of Texas, That the following are granted permission to sue the State of Texas and the General Land Office subject to Chapter 107, Civil Practice and Remedies Code, as added by Chapter 524, Acts of the 70th Legislature, Regular Session, 1987, to determine and establish the boundary line between the above described surveys and the Canadian River:

E. H. Brainard, II, 2125 Mary Ellen, Pampa, Texas
John F. (Jack) Allen, Route 1, Box 103, Skellytown, Texas
Ruth Wilson, Rt. 1, Box 49, Perryton, Texas
Barbara Woodward Lips, 305 Genesco Rd., San Antonio, Texas
Morrison Cattle Company, Rt. 1, Box 61, Pampa, Texas
Boone and Bea Pickens, P. O. Box 2009, Amarillo, Texas
Catherine C. Whittenburg Trusts, P. O. Box 26, Amarillo, Texas; and, be it further

RESOLVED, That the Commissioner of the General Land Office be served process as provided by Section 107.002(a)(3), Civil Practice and Remedies Code, as added by Chapter 524, Acts of the 70th Legislature, Regular Session, 1987; and, be it further

RESOLVED, That any final judgment adjudicating the title dispute in a suit brought concerning title to boundaries of the Canadian River under this resolution shall be limited to settling the title dispute and may not authorize an award of monetary damages or attorney's fees; and, be it further

RESOLVED, That the Canadian Municipal Water Authority is granted permission to intervene, if appropriate, in a suit brought as provided by this resolution; and, be it further

RESOLVED, That any user of the property owned by the state is granted permission to intervene, if appropriate, in a suit brought as provided by this resolution, either individually or as a representative of a class; and, be it further

RESOLVED, That any final judgment adjudicating the location of the boundaries of the Canadian River in a suit brought under this resolution shall be res judicata as to those boundaries for all purposes, subject to the rules of law applicable to future erosion or accretion; and, be it further

RESOLVED, That in the event suit is filed pursuant to this resolution, venue is exclusively in Hutchinson County, Texas.

Amendment No. 1 to Floor Amendment - Parker

Amend the floor substitute as follows:

(1) On page 3, strike lines 16-18 and substitute the following: "erosion or accretion."

Amendment No. 2 to Floor Amendment - S. Johnson

Amend the amendment to **S.C.R. 165**, as follows:

On page 3, between lines 4 and 5, insert:
"RESOLVED, That the lawsuit herein authorized must be filed in Hutchinson County on or before the first anniversary of the final adoption of this resolution; and, be it further"

On page 3, strike lines 8 through 11, and substitute the following:
"RESOLVED, That any user of the above described property is granted permission to intervene in the lawsuit, if found by the Court to be a proper party, either individually or as a representative of a class; and be it further"

The amendments were read.

Senator Sims moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the resolution.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **S.C.R. 165** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the resolution: Senators Sims, Chairman; Bivins, Glasgow, McFarland and Krier.

HOUSE BILL 948 ON SECOND READING

On motion of Senator Glasgow and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 948, Relating to the amount of interest allowed by state usury law.

The bill was read second time.

Senator Glasgow offered the following committee amendment to the bill:

Amend **H.B. 948** by deleting Sections 2 and 3 and substituting the following Sections 2 and 3:

SECTION 2. Article 1.06, Title 79, Revised Statutes (Article 5069-1.06, Vernon's Texas Civil Statutes), is amended by adding Sections (4) and (5) to read as follows:

(4)(A) A person has no liability to an obligor for a violation of this Subtitle if:

(i) within 60 days after the date the person actually discovered the violation the person corrects the violation as to the obligor by performing the required duty or act or by refunding any amount in excess of that authorized by law; and

(ii) the person gives written notice to the obligor of the violation before the obligor has given written notice of or has filed an action alleging the violation of this Subtitle.

(B) For the purposes of this section, the term "actually discovered" shall not be construed, interpreted, or applied in a manner that refers to the time or date when, through reasonable diligence, an ordinarily prudent person could or should have discovered or known as a matter of law or fact of the violation in question, but the term shall be construed, interpreted, and applied to refer to the time of the discovery of the violation in fact. However, the actual discovery of a violation in one transaction may constitute actual discovery of the same violation in other transactions if the violation actually discovered is of such a nature that it would necessarily be repeated and would be clearly apparent in the other transactions without the necessity of examining all the other transactions. For purposes of this Section the giving of written notice shall be accomplished by and on the delivery of the notice to the person to whom the notice is directed or to the person's duly authorized agent or attorney of record. The delivery shall be made in person or by United States mail to the address shown on the most recent documents in the transaction. Deposit of the notice as registered or certified mail in a postage paid, properly addressed wrapper in a post office or official depository under the care and custody of the United States Postal Service shall constitute prima facie evidence of the delivery of the notice to the person.

(C) A person has no liability to an obligor for a violation of this Subtitle if:

(i) before March 1, 1990, the person corrects the violation as to the obligor by performing the required duty or act or by refunding any amount in excess of that authorized by law; and

(ii) the person gives written notice to the obligor of the violation before the obligor has given written notice of or has filed an action alleging the violation of this Subtitle.

(5) The action of a person who corrects a violation of this Subtitle as provided by Section (4) of this Article is effective as to all persons in the same transaction, and those persons are entitled to the same protection as that provided by Section (4) of this Article to the person who makes the correction.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The committee amendment was read and was adopted viva voce vote.

VOTE ON ADOPTION OF COMMITTEE AMENDMENT NO. 1 RECONSIDERED

On motion of Senator Glasgow and by unanimous consent, the vote on the adoption of Committee Amendment No. 1 was reconsidered.

Question - Shall the committee amendment be adopted?

Senator Glasgow offered the following substitute amendment for the committee amendment:

Amend **H.B. 948** by striking everything after the enacting clause and substitute the following therefor.

SECTION 1. Section (2), Article 1.06, Title 79, Revised Statutes (Article 5069-1.06, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. Any person who contracts for, charges or receives interest which is in excess of double the amount of interest allowed by this Subtitle, except in the case of interest charged on open accounts when zero interest was allowed to be charged, shall forfeit as an additional penalty, all principal as well as interest and all other charges and shall pay reasonable attorney fees set by the court; provided further that

any such person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by fine of not more than One Thousand Dollars. Each contract or transaction in violation of this section shall constitute a separate offense punishable hereunder.

SECTION 2. Article 1.06, Title 79, Revised Statutes (Article 5069-1.06, Vernon's Texas Civil Statutes), is amended by adding Sections (4) and (5) to read as follows:

(4)(A) A person has no liability to an obligor for a violation of this Subtitle if:

(i) within 60 days after the date the person actually discovered the violation the person corrects the violation as to the obligor by performing the required duty or act or by refunding any amount in excess of that authorized by law; and

(ii) the person gives written notice to the obligor of the violation before the obligor has given written notice of or has filed an action alleging the violation of this Subtitle; or

(B) For the purposes of this section, the term "actually discovered" shall not be construed, interpreted, or applied in a manner that refers to the time or date when, through reasonable diligence, an ordinarily prudent person could or should have discovered or known as a matter of law or fact of the violation in question, but the term shall be construed, interpreted, and applied to refer to the time of the discovery of the violation in fact. However, the actual discovery of a violation in one transaction may constitute actual discovery of the same violation in other transactions if the violation actually discovered is of such a nature that it would necessarily be repeated and would be clearly apparent in the other transactions without the necessity of examining all the other transactions. For purposes of this Section the giving of written notice shall be accomplished by and on the delivery of the notice to the person to whom the notice is directed or to the person's duly authorized agent or attorney of record. The delivery shall be made in person or by United States mail to the address shown on the most recent documents in the transaction. Deposit of the notice as registered or certified mail in a postage paid, properly addressed wrapper in a post office or official depository under the care and custody of the United States Postal Service shall constitute prima facie evidence of the delivery of the notice to the person.

(C) A person has no liability to an obligor for a violation of this Subtitle if:

(i) before March 1, 1990, the person corrects the violation as to the obligor by performing the required duty or act or by refunding any amount in excess of that authorized by law and

(ii) the person gives written notice to the obligor of the correction before the obligor has given written notice of or has filed an action alleging the violation of this Subtitle; or

(iii) the violation of this Subtitle occurred as a result of an oral charge which was withdrawn orally before the obligor gave written notice of or filed an action alleging the violation of this Subtitle.

(5) The action of a person who corrects a violation of this Subtitle as provided by Section (4) of this Article is effective as to all persons in the same transaction, and those persons are entitled to the same protection as that provided by Section (4) of this Article to the person who makes the correction.

SECTION 3. This Act applies only to a contract executed on or after the effective date of this Act and does not affect the prosecution of an offense committed before that date. A contract executed and an offense committed before the effective date of this Act are governed by the law in effect when the action was brought, and that law is continued in effect for that purpose.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public

necessitythat the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The substitute for the committee amendment was read and was adopted viva voce vote.

On motion of Senator Glasgow and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 948 ON THIRD READING

Senator Glasgow moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 948** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Parmer.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Parmer.

CONFERENCE COMMITTEE ON HOUSE BILL 1546

Senator Santiesteban called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 1546** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **H.B. 1546** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Santiesteban, Chairman; Sims, Armbrister, Montford and Uribe.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 452 ADOPTED

Senator Krier called from the President's table the Conference Committee Report on **S.B. 452**. (The Conference Committee Report having been filed with the Senate and read on Friday, May 26, 1989.)

On motion of Senator Krier, the Conference Committee Report was adopted viva voce vote.

SENATE BILL 743 WITH HOUSE AMENDMENTS

Senator Montford called **S.B. 743** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment - Connelly

Amend **S.B. 743** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Section 1, Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. ARCHITECTS TO REGISTER. In order to safeguard life, health, and property, and the public welfare, and in order to protect the public against the irresponsible practice of the profession of architecture by properly defining and regulating the practice of architecture, no person shall practice architecture, as herein defined, within this State, after the effective date of this Act [~~ninety (90) days after the appointment and qualification of the members of the Board of Architectural Examiners hereinafter created~~], unless he or she be a registered architect as provided by this Act.

SECTION 2. Subsection (c), Section 7, Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) The Board shall also accept for examination, applicant, although not a graduate as above required, who possesses all of the other qualifications and furnishes evidence acceptable to the Board of his or her having completed not less than eight years' satisfactory experience in architecture in the office or offices of one or more legally practicing architects, or any combination of architectural schooling and experience acceptable to the Board totaling eight years.

SECTION 3. Section 11, Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11. REVOCATION OR CANCELLATION OF CERTIFICATE. Registration certificates of architects issued in accordance with this Act shall remain in full force and effect until expiration date unless revoked or suspended for cause as herein provided. The registration certificate and right of any person to practice architecture in this State may be revoked or [~~and~~] cancelled or a fine not to exceed One Thousand Dollars ($1000.00) may be levied against that person, or any combination thereof, by the Texas Board of Architectural Examiners after due notice and hearing and upon the proof of the violation of the law in any respect in regard thereto, or for any cause for which the Texas Board of Architectural Examiners is authorized to refuse to grant registration certificates, or for proof of gross incompetency or for recklessness in the construction of buildings on the part of the architect designing, planning, or observing or supervising the construction or alteration of same, or for dishonest practice on the part of the holder of such registration certificate. The action of the Board in revoking or [~~and~~] cancelling such registration certificate, [~~or in~~] refusing to grant a certificate, or assessing a fine, may be appealed in the manner provided by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 4. Section 12, Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 12. ANNUAL REGISTRATION AND FEE; CERTIFICATE OF RENEWAL; FAILURE TO RENEW; SUSPENSION AND REVOCATION. All certificates of registration shall expire annually on a date set by the Board as part of a staggered renewal system and shall become invalid on that date unless renewed. It shall be the duty of the secretary-treasurer of the Board to notify every person registered under this Act of the date of expiration of his or her certificate and the amount of the fee that shall be required for its renewal for one (1) year. The notice shall be mailed at least one (1) month in advance of the date of expiration of said certificate. Renewal may be effected by the payment of a fee to be set by the Board, but not to exceed Fifty Dollars ($50.00) for residents nor One Hundred Dollars

($100.00) for nonresidents. Upon receipt of the required fee within the time and in the manner prescribed by the Board the designated officer or employee of the Board shall issue to the registered architect a certificate of renewal of his or her registration certificate for the term of one (1) year. Failure to renew a certificate of registration by the expiration date established by the Board shall result in an increase of the renewal fee by Twenty Dollars ($20.00). If failure to renew shall continue for more than ninety (90) days after the date of expiration of the certificate of registration, such certificate to practice architecture in this State may be revoked and an entry of such revocation made in the official records of the Board; and thereafter the applicant may be required in the discretion of the Board in each case to take and satisfactorily pass such examination as may be prescribed by the Board, and if the applicant passes such examination successfully the fee to be paid upon reinstatement [~~renewal~~] of the registration certificate shall be, in such case, the sum not to exceed One Hundred Dollars ($100.00) as set by the Board. All reinstated registration certificates shall carry the same certificate number as the original certificate. A registered architect, as herein defined, who is on active duty as a member of the Armed Forces of the United States of America subsequent to October 1, 1940, and who was at the time of his or her entry into said service or is now in good standing as a registered architect in this State, shall have his or her name continued on the list of registered architects and shall be exempt from the payment of any further fee during his or her service, as aforesaid, and until separated from the service; and when his or her active duty status ceases and he or she is separated from the service, he or she shall be exempt from payment of such fee for the then current fiscal year.

SECTION 5. Subsection (a), Section 13, Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) If any person or firm shall, for a fee or other direct compensation, pursue the practice of the profession of architecture in this State as herein defined, or shall engage in this State in the preparation of architectural plans and specifications for and the observation or supervision of the construction, enlargement or alteration of buildings [~~profession or business of planning, designing, or supervising the construction of buildings to be erected or altered by or~~] for other persons than himself, herself or themselves except as provided under Section 14 of this Act, or [~~and~~] shall advertise, or put out any sign, card, or drawings in this State designating himself, herself, or themselves as an architect, architectural designer, or other title of profession or business using some form of the word "Architect" without having first complied with the provisions of this Act, such person, or the members of such firm, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than Two Hundred Fifty Dollars ($250.00) [~~Twenty-five Dollars ($25.00)~~] and not more than One Thousand Dollars ($1000.00) [~~Two Hundred Dollars ($200.00)~~] for each offense; and each and every day of violation of this Act as above set forth shall constitute a separate offense.

SECTION 6. Section 14, Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 14. EXCEPTIONS FROM ACT. The following persons shall be exempt from the provisions of this Act, provided that such persons do not in any manner represent themselves to be an architect, architectural designer, or other title of profession or business using some form of the word "architect" as prohibited by Section 13 of this Act [~~This Act shall not apply~~]:

1. a person who engages in or is employed in [~~To~~] the practice of architecture solely as an officer or employee of the United States, but persons so engaged or employed shall not engage in the private practice of architecture in this State without first having a registration certificate as herein provided;

2. a person who is a [~~To~~] legally qualified architect [~~architects~~] residing in another State or country [~~county~~] outside the border of the United States, who does [~~do~~] not maintain nor open offices in this State, who agrees [~~agree~~] to perform or holds himself or herself [~~hold themselves~~] out as able to perform any of the professional services involved in the practice of architecture, provided that when performing the architectural service in this State, he or she employs [~~they shall employ~~] a resident registered architect of this State as a consultant, or acts [~~shall act~~] as a consultant of a registered architect in this State or first becomes registered [~~shall register~~] as an architect in this State as provided by this Act;

3. a person who prepares architectural [~~To the preparation of~~] plans and specifications for or observes or supervises [~~and the supervision of~~] the alteration of any building, provided the alteration will not involve [~~involving substantial and major~~] structural or exitway changes to the building which are substantial and major.

The plans and specifications for an alteration to a building described in Subdivision (4) of this section may be prepared by a person who is not a registered architect;

4. a person who prepares architectural [~~To the preparation of~~] plans and specifications for or observes or supervises [~~and the supervision of~~] the construction, enlargement, or alteration of a privately owned building [~~private buildings~~] which is: [~~are~~]

(A) a building used primarily [~~exclusively~~] for farm, ranch, or agricultural purposes or used primarily [~~exclusively~~] for storage of raw agricultural commodities;

(B) a single-family or a dual-family dwelling and any buildings and appurtenances associated with such dwelling;

(C) a multifamily dwelling that does not exceed a height of two (2) stories and does not exceed sixteen (16) units per building;

(D) a building that does not exceed a height of two (2) stories unless the building is described in Paragraphs (A) and (B) of this subdivision;

(E) a building that does not exceed a square footage of twenty thousand (20,000) square feet unless the building is described in Paragraphs (A), (B) and (C) of this subdivision.

[~~5. To any person or firm who prepares plans and specifications for the erection or alteration of a building, or supervises the erection or alteration of a building by or for other persons than himself, or themselves, but does not in any manner represent himself, herself, or themselves to be an architect, architectural designer, or other title of profession or business using some form of the word "architect".~~]

SECTION 7. Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes), is amended by adding a new Section 15 to read as follows:

SECTION 15. INSTITUTIONAL RESIDENTIAL FACILITIES. Architectural plans and specifications for any new building or for the modification of any existing building intended for use as an institutional residential facility, regardless of the number of stories or square footage of the building, shall be prepared by a person who is registered in accordance with this Act. An institutional residential facility shall mean any building intended for occupancy of persons on a twenty-four hour (24-hour) basis who are receiving custodial care from the proprietors or operators of the building.

SECTION 8. Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes), is amended by adding a new Section 16 to read as follows:

SECTION 16. PUBLIC WORK. To protect the public health, safety and welfare of the citizens of the State of Texas, an architect registered in accordance with this Act must prepare the architectural plans and specifications for:

(1) a new building intended for education, assembly, or office occupancy whose construction costs exceed $50,000 which is to be constructed by a State agency, a political subdivision of this State, or any other public entity in this State; or

(2) any structural or exitway changes that are substantial and major that have construction costs that exceed $25,000 to an existing building owned by a State agency, a political subdivision of this State, or any other public entity in this State that is used or will be used for educational, assembly or office occupancy.

SECTION 9. Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes), is amended by adding a new Section 17 to read as follows:

SECTION 17. ENFORCEMENT. (a) This Act applies to all architecture practiced in this State that is not exempted by this Act. A public official of this State or of a political subdivision of this State who is charged with the enforcement of laws, ordinances, codes, or regulations that affect the practice of architecture may only accept architectural plans, specifications, and other related documents prepared by registered architects, as evidenced by the seal of the architect, unless exempted by this Act.

(b) This Act shall not be construed to preempt the provisions of any ordinance adopted by a municipality of this State or to restrict or expand the powers of any municipality of this State.

(c) Violations of this Act shall be reported to the Board.

SECTION 10. This Act takes effect January 1, 1990.

SECTION 11. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and this Act take effect and be in force according to its terms, and it is so enacted.

Floor Amendment - Kuempel

Amend **S.B. 743** as follows:

(1) On page 8, strike lines 14 through 27 and substitute the following:

"SECTION 16. PUBLIC WORK. To protect the public health, safety and welfare of the citizens of the State of Texas, an architect registered in accordance with this Act must prepare the architectural plans and specifications for:

(1) a new building intended for education, assembly, or office occupancy whose construction costs exceed One Hundred Thousand Dollars ($100,000) which is to be constructed by a State agency, a political subdivision of this State, or any other public entity in this State; or

(2) any alteration or addition to an existing building owned by a State agency, a political subdivision of this State, or any other public entity in this State that is used or will be used for educational, assembly, or office occupancy whose construction costs exceed Fifty Thousand Dollars ($50,000) and where such alteration or addition requires:

(A) the removal, relocation, or addition of any walls or partitions; or

(B) the alteration or addition of an exit."

Floor Amendment on Third Reading - Kuempel

Amend the second reading floor amendment to **S.B. 743** by striking, in their entirety, Subsections (2)(A) and (B) that read:

(2) any alteration or addition to an existing building owned by a State agency, a political subdivision of this State, or any other public entity in this State that is used or will be used for educational, assembly, or office occupancy whose construction costs exceed Fifty Thousand Dollars ($50,000) and where such alteration or addition requires:

(A) the removal, relocation, or addition of any walls or partitions or;

(B) the alteration or addition of an exit."

The amendments were read.

Senator Montford moved to concur in the House amendments to **S.B. 743**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Parmer.

SENATE BILL 795 WITH HOUSE AMENDMENTS

Senator Montford called **S.B. 795** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Local and Consent Calendars
Committee Amendment No. 1 - Craddick

Amend **S.B. 795** as follows:

(1) On page 5, line 19, strike "also" and substitute "not [~~also~~]".

(2) On page 23, strike lines 9-23 and substitute the following:

"(d) Not later than the 30th day after the day on which a person completes an examination administered by the board, the board shall send to the person his or her examination results. If requested in writing by a person who fails the examination, the board shall send to the person not later than the 60th [~~30th~~] day after the day on which the request is received by the board an analysis of the person's performance on the examination.

"(e) An applicant who fails [~~failing~~] an examination may apply to [~~for and~~] take a subsequent examination not earlier than [~~at the expiration of~~] six months from the date of the failed [~~preceding~~] examination by filing an updated application and paying an additional examination fee not to exceed $100."

(3) On page 23, line 24, strike "(e)" and substitute "(f)".

(4) On page 27, line 6, strike "set by the board" and substitute "of $10".

(5) On page 27, line 8, between "the board" and the period, insert "or to take an examination to be reinstated to active status".

(6) On page 27, lines 10-11, strike "satisfy education, examination, and other requirements prescribed by the board" and substitute "notify the board in writing, requesting reinstatement to active status".

(7) On page 31, line 12, between "surveying," and "the", insert "not to exceed two hours in duration,".

(8) On page 37, strike lines 17-18 and substitute the following: "to cross the land. Venue for the action shall be in the county in which the land is located. Process".

(9) On page 42, line 8, strike "1990" and substitute "1993".

Local and Consent Calendars
Committee Amendment No. 2 - Hinojosa

Amend **S.B. 795** on page 6 by striking lines 1-3 and substituting the following:

Upon the appointment of the first board under this Act and upon February 10th of each odd-numbered year thereafter, the governor shall appoint from among the membership of the board a chairman.

The amendments were read.

On motion of Senator Montford and by unanimous consent, the Senate concurred in the House amendments to **S.B. 795** viva voce vote.

SENATE JOINT RESOLUTION 5 WITH HOUSE AMENDMENT

Senator Montford called **S.J.R. 5** from the President's table for consideration of the House amendment to the resolution.

The President laid the resolution and the House amendment before the Senate.

Floor Amendment - T. Smith

Amend **S.J.R. 5** by striking all below the resolving clause and substituting the following:

SECTION 1. Article III of the Texas Constitution is amended by adding Section 49-d-7 to read as follows:

Sec. 49-d-7. (a) The Texas Water Development Board may issue additional Texas Water Development Bonds up to an additional aggregate principal amount of $500 million. Of the additional bonds authorized to be issued, $250 million of those bonds shall be used for purposes provided by Section 49-c of this article, $200 million of those bonds shall be used for purposes provided by Section 49-d-1 of this article, and $50 million of those bonds shall be used for flood control as provided by law.

(b) The Texas Water Development Board may use the proceeds of Texas Water Development Bonds issued for the purposes provided by Section 49-c of this article for the additional purpose of providing financial assistance, on terms and conditions provided by law, to various political subdivisions and bodies politic and corporate of the state and to nonprofit water supply corporations to provide for acquisition, improvement, extension, or construction of water supply projects that involve the distribution of water to points of delivery to wholesale or retail customers.

(c) The legislature may require review and approval of the issuance of the bonds, the use of the bond proceeds, or the rules adopted by an agency to govern use of the bond proceeds. Notwithstanding any other provision of this constitution, any entity created or directed to conduct this review and approval may include members or appointees of members of the executive, legislative, and judicial departments of state government.

(d) Except as specifically provided by Subsection (e) of this section, the Texas Water Development Board shall issue the additional bonds authorized by this section for the terms, in the denominations, form, and installments, on the conditions, and subject to the limitations provided by Sections 49-c and 49-d-1 of this article and by laws adopted by the legislature implementing this section.

(e) The legislature may provide by law for subsidized loans and grants from the proceeds of bonds authorized by this section to provide wholesale and retail water and wastewater facilities to economically distressed areas of the state as defined by law, provided, the principal amount of bonds that may be issued for the purposes under this subsection may not exceed 20 percent of the total amount of bonds authorized by this section. Separate accounts shall be established in the water development fund for administering the proceeds of bonds issued for purposes under this subsection, and an interest and sinking fund separate from and not subject to the limitations of the interest and sinking fund created pursuant to Section 49-c for other Texas Water Development Bonds is established in the State

Treasury to be used for paying the principal of and interest on bonds for the purposes of this subsection. While any of the bonds authorized for the purposes of this subsection or any of the interest on those bonds is outstanding and unpaid, there is appropriated out of the first money coming into the State Treasury in each fiscal year, not otherwise appropriated by this constitution, an amount that is sufficient to pay the principal of and interest on those bonds issued for the purposes under this subsection that mature or become due during that fiscal year.

(f) Subsections (c) through (e) of Section 49-d-2 of this article apply to the bonds authorized by this section.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held on November 7, 1989. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment to authorize the issuance of an additional $500 million of Texas water development bonds for water supply, water quality, and flood control purposes."

The amendment was read.

Senator Montford moved to concur in the House amendment to **S.J.R. 5.**

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Parmer.

SENATE BILL 891 WITH HOUSE AMENDMENT

Senator Whitmire called **S.B. 891** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Local and Consent Calendars
Committee Amendment - VanderVoort

Amend **S.B. 891** as follows:

On page 13, line 16, strike "retired member's or survivor's monthly pension" and substitute "member shall not accrue a".

On page 13, line 17, strike "will be decreased if" and substitute "in excess of a".

On page 13, line 18, strike "the" and insert "which" after the comma and before "when".

On page 13, line 24, strike "the reduction" and substitute "such accrual limitation".

On page 14, line 1, strike, "A monthly benefit or allowance may be reduced" and substitute "Benefit accruals shall be limited".

On page 14, line 15, strike "service" and substitute "participation".

The amendment was read.

On motion of Senator Whitmire and by unanimous consent, the Senate concurred in the House amendment to **S.B. 891** viva voce vote.

SENATE BILL 424 WITH HOUSE AMENDMENT

Senator Whitmire called **S.B. 424** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Local and Consent Calendars
Committee Amendment - Polumbo

Amend **S.B. 424** as follows:

On page 1, line 10, after "property", add ", unless the student is in attendance in the capacity as an active member of a volunteer firefighting organization or a volunteer emergency medical services organization"

The amendment was read.

Senator Whitmire moved to concur in the House amendment to **S.B. 424**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Parmer.

HOUSE BILL 721 ON SECOND READING

On motion of Senator Edwards and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 721, Relating to the purchase or maintenance of insurance or other arrangements by a nonprofit corporation and by corporations for profit.

The bill was read second time.

Senator Caperton offered the following amendment to the bill:

Amend **H.B. 721** by adding the following SECTIONS _____ and renumbering all subsequent SECTIONS accordingly:

SECTION . Subchapter A, Chapter 14, Family Code, is amended by adding Sections 14.061 and 14.062 to read as follows:

Sec. 14.061. HEALTH INSURANCE. (a) In any suit affecting the parent-child relationship, a court shall order health insurance for the child as provided by this section. The court shall take into consideration the cost and quality of health insurance coverage available to the parties. Priority shall be given to health insurance coverage supplied by an employer of one of the parties.

(b) In determining the manner in which health insurance for the child is to be provided, the court shall consider the following factors:

(1) if health insurance is available for the child at the obligor's place of employment, the court may order the obligor to include the child in the obligor's health insurance; or

(2) if health insurance is not available for the child at the obligor's place of employment but is available for the child at the obligee's place of employment, the court may order the obligee to provide health insurance for the child and in addition may order the obligor to reimburse the obligee for the actual cost of the health insurance for the child; or

(3) if health insurance is not available for the child at either the obligor's or obligee's place of employment, the court may order the obligor to provide health insurance for the child to the extent that the insurance is available for the child from another source and the obligor is financially able to provide it.

(c) An amount that an obligor is required to pay for health insurance for the child under this section is in addition to the amount that the obligor is required to pay for child support under the guidelines for child support and is a child support obligation and may be enforced as a child support obligation.

Sec. 14.062. REIMBURSEMENT FOR PUBLIC ASSISTANCE. (a) The court may order either or both parents to make periodic payments or a lump-sum payment as child support, or both, as reimbursement for public assistance paid by the state for the support of a child under Chapter 31, Human Resources Code.

(b) Unless the state is a party to an agreement concerning support or purporting to settle past, present, or future support obligations by prepayment or otherwise, an

agreement between the parties shall not act to reduce or terminate any right of this state or any other state to recover for public assistance provided, however, that a certificate of assignment or petition for support has been filed with the court by the attorney general.

SECTION . Subsection (a), Section 77.001, Human Resources Code, is amended to read as follows:

(a) The state agency designated to administer a statewide plan for child support may establish and conduct a parent locator service which shall be used to obtain information as to the whereabouts, income, and holdings of any person when such information is to be used for the purposes of locating such person and establishing or enforcing a support or medical support obligation [~~collection~~] against such person.

SECTION . Subdivision (2), Subsection (d), Section 1, Article 3.51-6, Insurance Code, is amended to read as follows:

(2) No group policy of accident, health, or accident and health insurance, including group contracts issued by companies subject to Chapter 20, Insurance Code, as amended, shall be delivered in this state unless it contains in substance the following provisions or provisions which in the opinion of the commissioner are more favorable to the persons insured or at least as favorable to the persons insured and more favorable to the policyholder; provided, however, that (A) provisions (v), (xi), and (xiv) shall not apply to policies issued to a creditor to insure debtors of such creditor; (B) provision (xi) shall not apply to Chapter 20 companies; (C) the standard provisions required for individual health insurance policies shall not apply to group health insurance policies; and (D) if any provision of this section is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy, the insurer, with the approval of the commissioner, shall omit from such policy an inapplicable provision or part of a provision and shall modify an inconsistent provision in such manner as to make the provision as contained in the policy consistent with the coverage provided by the policy:

(i) a provision that premiums due under the policy shall be remitted on or before the due date by the premium payors as designated in the policy and within such period of grace as may be specified therein;

(ii) a provision that the validity of the policy shall not be contested except for nonpayment of premiums after it has been in force for two years from its date of issue and that in the absence of fraud no statement made by any person covered by the policy relating to his or her insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of two years during such person's lifetime nor unless it is contained in a written instrument signed by him or her; provided, however, that no such provision shall preclude the assertion at any time of defenses based upon: (aa) provisions in the policy which relate to eligibility for coverage; (bb) provisions in group accident and health insurance or disability insurance policies which relate to overinsurance; (cc) provisions of disability policies which relate to the relation of earnings to insurance; or (dd) other similar provisions in such policies that limit the amounts of recovery from all sources to no more than 100 percent of the total actual losses or expenses incurred;

(iii) a provision that the policy and any application attached shall constitute the entire contract between the parties and that in the absence of fraud all statements made by the policyholder or person insured shall be deemed representations and not warranties, and that no such statement shall be used in any contest under the policy, unless a copy of the written instrument containing the statement is or has been furnished to such person or in the event of death or

incapacity of the insured person to the individual's beneficiary or personal representative;

(iv) a provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of the coverage;

(v) a provision specifying the additional exclusions or limitations, if any, applicable under the policy with respect to a disease or physical condition of a person, not otherwise excluded from the person's coverage by name or specific description effective on the date of the person's loss, which existed prior to the effective date of the person's coverage under the policy. Any such exclusion or limitation may only apply to a disease or physical condition for which medical advice or treatment was received by the person during the 12 months prior to the effective date of the person's coverage. In no event shall such exclusion or limitation apply to loss incurred or disability commencing after the earlier of: (aa) the end of a continuous period of 12 months commencing on or after the effective date of the person's coverage during all of which the person has received no medical advice or treatment in connection with such disease or physical condition; and (bb) the end of the two-year period commencing on the effective date of the person's coverage;

(vi) if the premiums or benefits vary by age, a provision specifying an equitable adjustment of premiums or of benefits, or both, to be made in the event the age of a covered person has been misstated, such provision to contain a clear statement of the method of adjustment to be used;

(vii) a provision that written notice of claim must be given to the insurer within 20 days after the occurrence or commencement of any loss covered by the policy. Failure to give notice within such time shall not invalidate or reduce any claim if it shall be shown not to have been reasonably possible to give such notice and that notice was given as soon as was reasonably possible;

(viii) a provision that the insurer will furnish to the person making claim or to the policy holder for delivery to such person such forms as are usually furnished by it for filing proof of loss. If such forms are not furnished before the expiration of 15 days after the insurer received notice of any claim under the policy, the person making such claim shall be deemed to have complied with the requirements of the policy as to proof of loss upon submitting within the time fixed in the policy for filing proof of loss, written proof covering the occurrence, character, and extent of the loss for which claim is made.

(ix) a provision that in the case of claim for loss of time for disability, written proof of such loss must be furnished to the insurer within the 90 days after the commencement of the period for which the insurer is liable, that subsequent written proofs of the continuance of such disability must be furnished to the insurer at such intervals as the insurer may reasonably require, and that in the case of claim for any other loss written proof of such loss must be furnished to the insurer within 90 days after the date of such loss. Failure to furnish such proof within such time shall not invalidate or reduce any claim if it was not reasonably possible to furnish such proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity of the claimant, later than one year from the time proof is otherwise required;

(x) a provision that all benefits payable under the policy other than benefits for loss of time shall be payable not more than 60 days after receipt of proof, that, subject to due proof of loss, all accrued benefits payable under the policy for loss of time shall be paid not less frequently than monthly during the continuance of the period for which the insurer is liable, and that any balance remaining unpaid at the termination of such period shall be paid as soon as possible after receipt of such proof;

(xi) a provision that benefits for loss of life of the person insured shall be payable to the beneficiary designated by the person insured or the assignee. However, if the policy contains conditions pertaining to family status the beneficiary may be the family member specified by the policy terms. In either case, payment of these benefits is subject to the provisions of the policy. In the event no such designated or specified beneficiary is living at the death of the person insured, the benefits shall be payable to their estate of the insured. All other benefits of the policy shall be payable to the person insured or the assignee. The policy may also provide that if any benefit is payable to the estate of a person or to a person who is a minor or otherwise not competent to give a valid release, the insurer may pay such benefit, up to an amount established by the board, to any relative by blood or connection by marriage of such person who is deemed by the insurer to be equitably entitled thereto;

(xii) a provision that the insurer shall have the right and opportunity to examine the person of the individual for whom claim is made when and so often as it may reasonably require during the pendency of claim under the policy and also the right and opportunity to make an autopsy in case of death where it is not prohibited by law;

(xiii) a provision that no action at law or in equity shall be brought to recover on the policy prior to the expiration of 60 days after proof of loss has been filed in accordance with the requirements of the policy and that no such action shall be brought at all unless brought within three years from the expiration of the time within which proof of loss is required by the policy;

(xiv) a provision describing the conversion or extension of coverage option elected by the insurer in accordance with Subdivision (3) of Subsection (d) of this section; and

(xv) a provision that, in determining the dependents or the beneficiaries of an insured, or both, prohibits a distinction on the basis of the marital status or the lack thereof between the insured and the other parent.

SECTION 52. Chapter 3, Insurance Code, is amended by adding Article 3.51-13 to read as follows:

Art. 3.51-13. BENEFIT PAYMENTS TO PARENT OF A MINOR CHILD

Sec. 1. An insurer or group hospital service company that delivers, issues for delivery, or renews a group accident and sickness insurance policy in this state, including a policy issued by a company subject to Chapter 20 of this code, that provides coverage for a minor child who otherwise qualifies as a dependent of a person who is a member of the group may pay benefits on behalf of the child to the person who is not a member of the group if a court order providing for the managing conservator of the child has been issued by a court of competent jurisdiction in this or any other state.

Sec. 2. A group accident and sickness insurance policy issued by an insurer or group hospital service company may be required to pay benefits pursuant to the terms of the policy and as provided by this article on compliance by the person who is not a member of the group with the requirements of this article, claim application procedures of the insurer or company, and rules of the State Board of Insurance. However, any requirements imposed on the managing conservator of the child shall not apply in the case of any unpaid medical bill for which a valid assignment of benefits has been exercised in accordance with policy provisions or otherwise, nor to claims submitted by the group member where the group member has paid any portion of a medical bill that would be covered under the terms of the policy.

Sec. 3. Before a person who is not a member of a group is entitled to be paid benefits under Section 1 of this article, the person must submit to the insurer or company with the claim application written notice that the person:

(1) is the managing conservator of the child on whose behalf the claim is made; and

(2) submit a certified copy of a court order establishing the person as managing conservator or other evidence designated by rule of the State Board of Insurance that the person qualifies to be paid the benefits as provided by this article.

Sec. 4. The State Board of Insurance may adopt rules to assure the effective implementation of this article.

CAPERTON
EDWARDS

The amendment was read and was adopted viva voce vote.

On motion of Senator Edwards and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 721 ON THIRD READING

Senator Edwards moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 721** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Parmer.

The bill was read third time and was passed viva voce vote.

MESSAGE FROM THE HOUSE

House Chamber
May 28, 1989

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

The House has concurred in Senate amendments to the following House bills by non-record votes:

H.B. 5
H.B. 432
H.B. 884
H.B. 1302
H.B. 1332
H.B. 1827
H.B. 3099
H.B. 2356

The House has concurred in Senate amendments to **H.B. 1099** by a record vote of 138 Ayes, 0 Nays, 1 Present-not voting.

The House has concurred in Senate amendments to **H.B. 2263** by a record vote of 139 Ayes, 0 Nays, 1 Present-not voting.

The House has concurred in Senate amendments to **H.B. 2409** by a record vote of 134 Ayes, 4 Nays, 2 Present-not voting.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.C.R. 165**. The following have been appointed on the part of the House: Parker, Chair; Danburg, Hightower, Hury, Earley.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

HOUSE BILL 2150 ON SECOND READING

The Senate resumed consideration of the following bill on its second reading and passage to third reading, having adopted one floor amendment.

H.B. 2150, Relating to the counting of and instructions relating to certain ballots.

Question - Shall the bill as amended be passed to third reading?

Senator Green offered the following amendment to the bill:

Amend **H.B. 2150** by striking subsection (d) of SECTION 1 of the bill, on line 35, on page 1, and insert in its place:

(d) If a ballot indicates a straight-party vote for more than one party, a vote shall be counted for each nominee who:

(1) Receives an individual vote if no other individual votes are received in that race; and,

(2) Whether or not the nominee receives an individual vote, is not opposed by a nominee of a party that receives a straight-party vote, if no other individual votes are received in that race.

Also amend **H.B. 2150** by amending SECTION 4, subsection (b) by striking the words "or prevents as applicable," on lines 58 and 59 of page 1.

The amendment was read.

Senator Brown moved to table the amendment.

The motion was lost by the following vote: Yeas 10, Nays 20.

Yeas: Armbrister, Bivins, Brown, Harris, Henderson, Krier, Leedom, McFarland, Ratliff, Sims.

Nays: Barrientos, Brooks, Caperton, Carriker, Dickson, Edwards, Glasgow, Green, Haley, Johnson, Lyon, Montford, Parker, Santiesteban, Tejeda, Truan, Uribe, Washington, Whitmire, Zaffirini.

Absent-excused: Parmer.

Question recurring on the adoption of the amendment, the amendment was adopted viva voce vote.

On motion of Senator Brown and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

SENATE BILL 1481 WITH HOUSE AMENDMENTS

Senator Glasgow called **S.B. 1481** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Floor Amendment No. 1 - Hury

Amend **S.B. 1481** by adding new Section 6 and 7 to read as follows and renumbering current Section 6 as Section 8:

SECTION 6. Section 151.328, Tax Code, is amended by amending Subsection (b) and adding Subsections (d) and (e) to read as follows:

(b) Repair, remodeling, and maintenance services to aircraft operated by a certificated or licensed carrier of persons or property or to an engine or other component part of an aircraft operated by a certificated or licensed carrier of persons or property are exempted from the taxes imposed by this chapter.

(d) Machinery, tools, and equipment used or consumed exclusively in the repair, remodeling, or maintenance of aircraft, aircraft engines, or aircraft component parts by or on behalf of a certificated or licensed carrier of persons or property are exempted from the taxes imposed by this chapter.

(e) Tangible personal property that is permanently affixed or attached as a component part of an aircraft owned or operated by a certificated or licensed carrier of persons or property is exempted from the taxes imposed by this chapter.

SECTION 7. Section 6 of this Act takes effect September 1, 1989.

Floor Amendment No. 2 - Morales

Amend **S.B. 1481** by adding the following appropriately numbered section and renumber subsequent sections accordingly:

SECTION ____. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.336 to read as follows:

Sec. 151.336. CERTAIN COINS AND PRECIOUS METALS. (a) The sale of gold, silver or numismatic coins or a platinum, gold or silver bullion is exempted from the sales tax imposed by Subchapter C at any sale to a purchaser in which the total sales price of all of the items sold equals $1000 or more.

(b) An item exempt under Subsection (a) is exempt from the use tax imposed by Subchapter D to the purchaser until the item is subsequently transferred.

The amendments were read.

On motion of Senator Glasgow and by unanimous consent, the Senate concurred in the House amendments to **S.B. 1481** viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 1225 ON SECOND READING

On motion of Senator Barrientos and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1225, Relating to the payment of ad valorem taxes by credit card.

The bill was read second time.

Senator Barrientos offered the following amendment to the bill:

Amend **C.S.H.B. 1225** as follows:

1. In SECTION 2, strike Subsection (c) of Sec. 31.072 and substitute the following:

"(c) A contract under this section must require the property owner to make monthly deposits to the escrow account until the amount set in the contract under Subsection (d) of this section accrues in the account or until the tax bill for the property is prepared, whichever occurs earlier."

2. In SECTION 2, strike the following language from Subsection (d) of Sec. 31.072:

"together with accrued interest"

3. In SECTION 2, strike the entirety of Subsection (f) of Sec. 31.072 and renumber the succeeding subsections appropriately.

4. In SECTION 2, strike the following language from the current Subsection (g) of Sec. 31.072:

"A property owner who withdraws the money deposited in the escrow account under this subsection forfeits the interest earned on the account to the general revenue fund of the taxing unit or other entity whose collector maintains the account."

The amendment was read and was adopted viva voce vote.

On motion of Senator Barrientos and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 1225 ON THIRD READING

Senator Barrientos moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 1225** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Parmer.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Parmer.

HOUSE CONCURRENT RESOLUTION 194 ON SECOND READING

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading:

H.C.R. 194, Encouraging the State Board of Education to emphasize the importance of international education in Texas.

The resolution was read second time and was adopted viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 791 ON SECOND READING

On motion of Senator Tejeda and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 791, Relating to the coordination of emergency services for poison control.

The bill was read second time.

Senator Haley offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 791** as follows:

(1) On page 2, between lines 61 and 62, insert new Sections 2, 3, and 4 to read as follows:

SECTION 2. Section 3.10A of the Emergency Medical Services Act (Article 4447o, Vernon's Texas Civil Statutes) is repealed.

SECTION 3. The Emergency Medical Services Act (Article 4447o, Vernon's Texas Civil Statutes) is amended by adding Section 3.21 to read as follows:

Sec. 3.21. SUBSCRIPTION PROGRAM. (a) An emergency medical services provider may create and operate a subscription program to fund an emergency medical service for the purpose of providing emergency medical services.

(b) The board shall adopt rules establishing minimum standards for the creation and operation of such a subscription program for the provision of emergency medical services.

(c) In adopting the rules to govern the creation and operation of subscription programs under Subsection (b) of this section, the board shall adopt a rule that requires an emergency medical services provider who contemplates the creation and operation of a subscription program to secure a surety bond in the amount of sums to be subscribed before soliciting subscriptions or to purchase and maintain contractual liability insurance. The surety bond must be issued by a company that is licensed by or eligible to do business in the State of Texas.

(d) The board may adopt rules for waiver of the contractual liability insurance or surety bond.

(e) Subscription programs in operation on the effective date of this Act are considered to be in compliance with this Act and not subject to the provisions of this Act prior to September 1, 1990.

(f) A subscription program established under this section is exempt from the Insurance Code.

SECTION 4. Section 2(d), Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) "Authorized Emergency Vehicle" means vehicles of the fire department (fire patrol), police vehicles, public and private ambulances for which permits have been issued by the State Board of Health, emergency vehicles of municipal departments or public service corporations as are designated or authorized by the governing body of an incorporated city, private vehicles operated by volunteer firemen or certified Emergency Medical Services employees or volunteers while answering a fire alarm or responding to a medical emergency, industrial ambulances and other industrial emergency response vehicles when operating in an emergency situation provided the vehicle is also operated in adherence with criteria established by the Texas Industrial Fire Training Board of the State Firemen's and Fire Marshals' Association of Texas as the criteria are in effect on September 1, 1989, and vehicles operated by blood banks or tissue banks, accredited or approved under the laws of this state or the United States, while making emergency deliveries of blood, drugs or medicines, or organs.

(2) Renumber existing Section 2 as Section 5.

The amendment was read and was adopted viva voce vote.

Senator Santiesteban offered the following amendment to the bill:

Floor Amendment No. 2

Amend **C.S.H.B. 791** by adding the following new sections and by renumbering subsequent sections appropriately:

SECTION 1. Subsection (e), Section 58.002, Education Code, is amended to read as follows:

(e) It is the intent of this chapter that eventually at least 50 percent of the first-year resident physicians appointed by medical schools shall be in the primary care areas of family medicine, internal medicine, pediatrics, geriatrics, [~~and~~] obstetrics/gynecology, and emergency medicine with 25 percent of those residents in family practice.

SECTION 2. Subsection (a), Section 58.003, Education Code, is amended to read as follows:

(a) Beginning September 1, 1981, each accredited school listed in Section 58.001 of this code is entitled to receive funds appropriated by the legislature in an amount not to exceed $15,000 in any fiscal year for each resident physician appointed by the school as a resident physician for that year. Money appropriated under this chapter may not be transferred from the resident physicians program. Funds appropriated under this chapter shall be allocated to each accredited school by the Texas Higher Education Coordinating Board at a rate of $15,000 per year per eligible resident physician. Funds shall be allocated to each accredited school on a pro rata basis as determined by the total number of eligible resident physicians. The coordinating board shall be responsible for monitoring and ensuring compliance with this chapter. The coordinating board may adopt rules, regulations, and procedures as necessary to implement this chapter. The coordinating board may appoint an advisory committee from outside the board's membership to assist in performing its duties under this chapter.

SECTION 3. Subsection (d), Section 58.003, Education Code, is amended to read as follows:

(d) If a school covered by this chapter receives from the Texas Higher Education Coordinating Board[~~, Texas College and University System,~~] a sum granted for the education, training, development, and preparation of the school's family practice resident physicians, to the extent of the sum actually received by the school, the school is prohibited from spending funds appropriated under this chapter that would otherwise be available to pay the same family practice resident physicians for the same education, training, development, and preparation.

SECTION 4. Section 58.003, Education Code, is amended by adding Subsection (f) to read as follows:

(f) The coordinating board may accept gifts, grants, and donations for the purposes of this chapter.

The amendment was read and was adopted viva voce vote.

Senator Edwards offered the following amendment to the bill:

Floor Amendment No. 3

Amend **C.S.H.B. 791**, Section 1 by striking Subsection 2.09(g) in its entirety.

The amendment was read and was adopted viva voce vote.

On motion of Senator Tejeda and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 791 ON THIRD READING

Senator Tejeda moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 791** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Parmer.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Parmer.

HOUSE BILL 319 ON SECOND READING

On motion of Senator Brooks and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 319, Relating to the authority of the commissioners court of a county to prohibit the accumulation of refuse and junk near certain public highways; providing a penalty.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 319 ON THIRD READING

Senator Brooks moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 319** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Parmer.

The bill was read third time and was passed viva voce vote.

(Senator Haley in Chair)

HOUSE BILL 1884 ON SECOND READING

On motion of Senator Krier and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1884, Relating to requiring a property tax notice of appraised value of real property to list separately the value of land and improvements.

The bill was read second time.

(Senator Glasgow in Chair)

Senator Krier offered the following amendment to the bill:

Floor Amendment No. 1

Amend **H.B. 1884** by inserting the following and appropriately numbering the sections:

SECTION . Section 25.20, Tax Code, is amended by adding Subsections (c), (d), and (e) to read as follows:

(c) On or before the date the appraisal records are submitted to the appraisal review board under Section 25.22, the chief appraiser shall submit to the assessor for each taxing unit in the district a list of each item of real property in the unit that was taxable in the preceding year but that is exempt in the current year under a section of Subchapter B, Chapter 11, other than Section 11.11, 11.12, or 11.13, according to the appraisal records. If an item of real property that was taxable in the preceding year becomes exempt under a section of Subchapter B, Chapter 11, other than Section 11.11, 11.12, or 11.13, in the current year as a result of an order of the appraisal review board or if for any other reason an item of real property that was taxable in the preceding year and that is exempt in the current year under one of those sections is omitted from the list, the chief appraiser shall notify the assessor for each taxing unit of the exemption as soon as practicable after determining that the property is exempt.

(d) A list or notice required by Subsection (c) of this section must include for each item of property:

(1) the name and, if known, the address of the property owner;

(2) the appraised value of the property for the preceding tax year; and

(3) a citation to the section of Chapter 11 under which the property is exempt.

(e) As soon as practicable after receiving a list or notice under Subsection (c), an assessor shall deliver a copy to the presiding officer of the governing body of each taxing unit for which the assessor assesses property taxes.

SECTION . Section 41.04, Tax Code, is amended to read as follows:

Sec. 41.04. CHALLENGE PETITION. (a) The appraisal review board is not required to hear or determine a challenge unless the taxing unit initiating the challenge files a petition with the board before June 1 or within 15 days after the date that the appraisal records are submitted to the appraisal review board, whichever is later. The petition must include an explanation of the grounds for the challenge.

(b) For exempt property for which the chief appraiser gives the notice required by Section 25.20(c) after the date the appraisal records are submitted to the appraisal review board, the deadline for filing a challenge petition under Subsection (a) is extended to the 15th day after the date the chief appraiser gives the required notice to the assessor for the unit.

SECTION . If this Act takes effect on or before April 1, 1989, the change in law made by this Act applies to exemptions granted for 1989 property taxes. Otherwise, the change in law made by this Act applies only to exemptions granted for taxes imposed after 1989.

The amendment was read and was adopted by the following vote: Yeas 22, Nays 1.

Nays: Henderson.

Absent: Bivins, Carriker, Harris, Leedom, Lyon, Uribe, Washington.

Absent-excused: Parmer.

Senator Green offered the following amendment to the bill:

Floor Amendment No. 2

Amend **H.B. 1884** by amending Section 2 to read "Section 1" instead of "This Act"; renumbering Section 3 as Section 4; and adding a new Section 3 to read as follows:

SECTION 3. Subchapter C, Chapter 11, Tax Code, is amended by adding Section 11.435 to read as follows:

Sec. 11.435. LATE APPLICATION FOR RELIGIOUS ORGANIZATION EXEMPTION. (a) The chief appraiser shall accept and approve or deny an application for an exemption under Section 11.20 after the filing deadline provided by Section 11.43 if the application is filed not later than December 31 of the sixth year after the year in which the taxes for which the exemption is claimed were imposed.

(b) The chief appraiser may not approve a late application for an exemption filed under this section if the taxes imposed on the property for the year for which the exemption is claimed are paid before the application is filed.

(c) If a late application is approved after approval of the appraisal records for the year for which the exemption is granted, the chief appraiser shall notify the collector for each taxing unit in which the property was taxable in the year for which the exemption is granted. The collector shall deduct from the person's tax bill the amount of tax imposed on the property for that year if the tax has not been paid, including penalties and accrued interest. The collector may not refund taxes, penalties, or interest paid on the property for which an exemption is granted under this section.

(d) The chief appraiser may grant an exemption for property pursuant to an application filed under this section only if the property otherwise qualified for the exemption under the law in effect on January 1 of the tax year for which the exemption is claimed.

(e) An application may not be filed under this section after December 31, 1990.

The amendment was read and was adopted viva voce vote.

Senator Montford offered the following amendment to the bill:

Floor Amendment No. 3

Amend **H.B. 1884** by adding in SECTION 1, Line 9, after the word "appraiser" and before the word "shall" the following: "for an appraisal district created for a county with a population of more than 250,000".

The amendment was read and was adopted viva voce vote.

On motion of Senator Krier and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 1884 ON THIRD READING

Senator Krier moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 1884** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Parmer.

The bill was read third time and was passed viva voce vote.

CONFERENCE COMMITTEE REPORT
HOUSE BILL 1023

Senator Leedom submitted the following Conference Committee Report:

Austin, Texas
May 28, 1989

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 1023** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

LEEDOM	WOLENS
BROWN	H. CUELLAR
RATLIFF	DUTTON
WHITMIRE	EDGE
On the part of the Senate	On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

COMMITTEE SUBSTITUTE
HOUSE BILL 2260 ON SECOND READING

On motion of Senator Harris and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 2260, Relating to the transfer of additional regulatory duties to the Alcoholic Beverage Commission and making an appropriation.

The bill was read second time.

Senator Harris offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 2260** as follows:

In Section 33 strike Section 5.01(b) and substitute in lieu thereof the following:
(b) The Texas Alcoholic Beverage Commission is subject to the Texas Sunset Act (Chapter 325, Government Code). Unless continued in existence as provided by that Act, the Commission is abolished and Subchapter A, Chapter 5, of this code expires September 1, 1993 [~~1991~~].

The amendment was read and was adopted viva voce vote.

Senator Harris offered the following amendment to the bill:

Floor Amendment No. 2

Amend **C.S.H.B. 2260** as follows:

(1) Add the following to Section 1, amending Section 2(12), Bingo Enabling Act:

(12) "Authorized commercial lessor" means a person eligible for a commercial license to lease bingo premises under Section 13 of this Act[~~, including a licensee permitted to conduct bingo under this Act, who owns or is a lessee of premises on which bingo is or will be conducted and that he offers for leasing to an authorized organization. The term does not include:~~

[~~(A) a person convicted of a felony, criminal fraud, or a crime of moral turpitude;~~

~~[(B) a public officer who receives any consideration, direct or indirect, as owner or lessor of premises offered for the purpose of conducting bingo; or~~

~~[(C) a firm or corporation in which a person covered by Paragraph (A) or (B) of this subdivision or a person married or related in the first degree to such a person has greater than a 10 percent proprietary, equitable, or credit interest or in which such a person is active or employed.~~

~~[This subdivision does not prevent any firm or corporation that is not organized for pecuniary profit and no part of the net earnings of which inure to the benefit of any individual, member, or shareholder, from being an authorized commercial lessor solely because a public officer or a person married or related in the first degree to a public officer is a member of, active in, or employed by the firm or corporation~~].

(2) Add the following new Subsections to Section 13, Bingo Enabling Act (Committee Report Section 6):

(l) A commercial license to lease bingo premises to a licensed authorized organization may be issued only to:

(1) an authorized organization licensed to conduct bingo that owns premises on which bingo is or will be conducted and that the organization leases or offers for lease to one or more other authorized organizations to conduct bingo;

(2) a person who leases premises for the total control and exclusive use of only one licensed organization as that organization's primary business office.

(m) Notwithstanding Subsection (l) of this section:

(1) a person who was licensed as a commercial lessor immediately before the date that Subsection (l) of this section and this subsection took effect, whose license has been kept in effect since that date, and who is otherwise eligible for the license may renew the license as a commercial lessor of bingo premises without regard to the number of authorized organizations leasing such premises from the commercial lessor; and

(2) a person whose application for a commercial lessor license was filed before and was pending on the date this subsection took effect is entitled to be licensed pursuant to that application according to the law in effect on the date the application was filed and if otherwise eligible for the license may renew the license.

(n) A commercial lessor covered by Subsection (m) may renew the license for a different location if the location of the premises covered by the license on the date this subsection took effect becomes unavailable to the commercial lessor for reasons beyond the commercial lessor's control.

(o) Notwithstanding Section 13(j) of this Act, if the ownership or other interest of the commercial lessor in the licensed premises if transferred, a license covered by Section (m) may be transferred to the person acquiring the interest of the commercial lessor in the premises, in the manner provided by the commission, if the person to whom the license is transferred is otherwise eligible to be licensed as a commercial lessor under the provisions of this Act other than Subsection (l) of this section. A license transferred under this subsection may subsequently be transferred in the same manner if the new licensed commercial lessor's ownership or other interest in the premises is transferred. The holder of a license transferred under this subsection has the same rights relating to the terms and renewal of the license, including the right to change premises under Subsection (n) of this section or transfer the license under this subsection, as the person from whom the license was transferred.

The following persons are not eligible for a commercial license to lease bingo premises to a licensed authorized organization:

(1) a person convicted of a felony, criminal fraud, gambling or gambling-related offense, or crime of moral turpitude, if less than 10 years have

elapsed since the termination of any sentence, parole, mandatory supervision, or probation served for the offense;

(2) a public officer who receives any consideration, direct or indirect, as owner or lessor of premises offered for the purpose of conducting bingo; or

(3) a person, firm, or corporation in which a person covered by Subdivision (1) or (2) of this subsection or a person married or related in the first degree to one of those persons has greater than a 10 percent proprietary, equitable, or credit interest or in which one of those persons is active or employed.

(q) Subsection (p)(3) of this section does not prevent any authorized organization, person, firm, or corporation that is not organized for pecuniary profit and no part of the net earnings of which inure to the benefit of any individual, member, or shareholder from being licensed as a commercial lessor solely because a public officer or a person married or related in the first degree to a public officer is a member of, active in, or employed by the authorized organization, person, firm, or corporation.

(3) Strike Section 46 of the bill and substitute the following:

SECTION 46. (a) Except as provided by Subsections (b) and (c) of this section, this Act takes effect January 1, 1990.

(b) The change in law made to Subdivision (12), Section 2, Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes), by this Act, and Section 13(1), (m), (n), (o), (p), and (q), Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes), as added by this Act, relating to the persons eligible to be licensed as commercial lessors of bingo premises, take effect June 10, 1989, if this Act is enacted by a vote of two-thirds of all the members elected to each house of the legislature. Otherwise, those provisions take effect September 1, 1989.

(c) This section and Sections 42 through 45 of this Act take effect September 1, 1989.

The amendment was read and was adopted viva voce vote.

Senator Whitmire offered the following amendment to the bill:

Floor Amendment No. 3

Amend **C.S.H.B. 2260** by striking Section 34, Bingo Enabling Act (page 13, lines 15 through 33), and substituting the following:

Sec. 34. APPEALS ON DENIAL OF LICENSE. (a) Any applicant for[;] or holder of[;] any license issued or to be issued under this Act whose application has been denied, whose license has been revoked or suspended, or who is otherwise aggrieved by any action of the commission [~~comptroller of public accounts~~] relating to licensing under this Act may appeal the decision ofthe commission to a district court of Travis County [~~from the determination of the comptroller by filing with the comptroller, the governing body, and the attorney general a written notice of appeal~~] within 30 days after the date on which the commission's decision becomes final and appealable [~~determination or action appealed from, and on the hearing of the appeal, the evidence, if any, taken before the comptroller of public accounts and any additional evidence may be produced and shall be considered in arriving at a determination of the matters in issue~~].

(b) Judicial review of the commission's decision is under the substantial evidence rule as provided by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) [~~The district court may order the comptroller of public accounts to issue a license to an applicant or reform a license issued to an applicant or order that the application be reconsidered by the comptroller if the court finds that the comptroller abused his discretion in his decision on the application~~].

The amendment was read and was adopted viva voce vote.

Senator Whitmire offered the following amendment to the bill:

Floor Amendment No. 4

Amend **C.S.H.B. 2260** by adding a new section appropriately numbered to read as follows:

SECTION _____. Section 36(b), Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) An offense under this section is a Class C misdemeanor, unless it is shown on the trial of the offense that the person has been convicted previously under this section, in which event it is a Class B misdemeanor. This subsection does not apply to an offense committed under Section 39(b) or Section 40 of this Act.

The amendment was read and was adopted viva voce vote.

Senator Whitmire offered the following amendment to the bill:

Floor Amendment No. 5

Amend **C.S.H.B. 2260** as follows:

(1) Add the following new sections, appropriately numbered, to read as follows:

SECTION _____. Sections 11(n) and (o), Bingo Enabling Act (Article 179) are amended to read as follows:

(n) A [~~person other than a~~] licensed manufacturer may furnish by sale or any other manner bingo equipment, devices, or supplies to a licensed[;] distributor, but [~~or representative~~] may not furnish by sale or any other manner bingo equipment, devices, or supplies to any other person [~~for use in bingo games subject to this Act~~].

(o) A licensed distributor may not furnish by sale [~~authorized organization may not obtain by purchase~~] or any other manner bingo equipment, devices, or supplies to a person other than a licensed authorized organization, another licensed distributor, or a person authorized to conduct bingo under Section 39(b)(3) or (4) of this Act [~~for use in bingo games subject to this Act except from a manufacturer, distributor, or representative licensed by the comptroller of public accounts~~]. A sale of bingo equipment, devices, or supplies authorized by this subsection must be made on terms requiring immediate payment or requiring payment not later than the 30th day after the date of actual delivery.

SECTION _____, Section 2(20), Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes), is repealed.

(2) On page 6, strike lines 52 through 57 and substitute the following:

(5) the applicant intends to ship bingo equipment, devices, or supplies, for [~~use or~~] resale in this state only to distributors[~~, representatives, or authorized organizations~~] licensed by the commission [~~comptroller or to persons authorized by Section 39 of this Act to conduct, promote, or administer bingo games subject to the restrictions of that section~~]; and

(3) On page 6, lines 69 and 70, strike through the words "AND REPRESENTATIVE'S LICENSE".

(4) On page 7, lines 3 and 4, strike through the words "and each representative of a distributor or manufacturer".

(5) On page 7, strike through the text beginning with "A sole owner" on line 5 and ending at the end of line 23.

(6) On page 7, line 24, strike through "and representative".

(7) On page 7, line 38, strike through the semicolon.

(8) On page 7, strike through the text on lines 39 through 43, except for the period on line 43.

(9) On page 7, lines 60 and 61, strike through "The fee for a representative's license is $150.".

(10) On page 7, line 64, strike "and" where it appears and insert ", and (g)" immediately after "(f)".

(11) On page 8, between lines 17 and 18, insert the following:

(g) All sales of bingo cards, supplies, devices, or equipment to licensees must be on terms of immediate payment or on terms requiring payment not later than the 30th day following the date of actual delivery. If any payment is not made when due, the seller shall notify the commission immediately and the commission shall notify all manufacturers and distributors licensed in the state of the default. In that event, a person may not sell or transfer any bingo equipment, devices, or supplies to the purchaser in default on any terms other than immediate payment on delivery until otherwise authorized by the commission. [~~Bingo cards, supplies, devices, or equipment may be sold or otherwise furnished only to licensed authorized organizations or persons exempt under Subdivision (3) or (4) of Subsection (b) of Section 39 of this Act~~].

(12) On page 8, line 32, immediately before distributor, add "or".

(13) On page 8, line 32, immediately after distributor, strike through the comma.

(14) On page 8, line 33, strike through "or representative".

(15) On page 8, line 44, strike through the comma immediately after "manufacturer" and substitute "or".

(16) On page 8, line 44, strike through ", or representative".

The amendment was read and was adopted viva voce vote.

Senator Whitmire offered the following amendment to the bill:

Floor Amendment No. 6

Amend **C.S.H.B. 2260** as follows:

(1) In Section 13(c)(2), Bingo Enabling Act (page 3, lines 42 through 46), insert the following immediately before the semicolon (line 46): "for which less than 10 years have elapsed since the termination of any sentence, parole, mandatory supervision, or probation served for the offense".

(2) In Section 13a(c)(1), Bingo Enabling Act (page 6, lines 35 through 38), insert the following immediately before the semicolon (line 38): "for which less than 10 years have elapsed since the termination of any sentence, parole, mandtory supervision, or probation served for the offense".

(3) In Section 13b(c)(1), Bingo Enabling Act (page 7, lines 46 and 47), insert the following immediately before the semicolon (line 47): ", if less than 10 years have elapsed since the termination of any sentence, parole, mandatory supervision, or probation served for the offense".

The amendment was read and was adopted viva voce vote.

Senator Edwards offered the following amendment to the bill:

Floor Amendment No. 7

Amend **C.S.H.B. 2260** as follows:

(1) Amend the appropriate section of the amendment by inserting Subsection (b) of Section 2A, Bingo Enabling Act, to read as follows:

(b) The rate of the tax imposed by this section is two percent of the taxable gross receipts, less the amount or value of all bingo prizes awarded by the taxpayer in the tax period.

(2) Amend Section ____ by striking Section 22, Bingo Enabling Act, and substituting the following:

Sec. 22. COMPUTATION OF TAX. A licensee required to report gross receipts taxes to the commission [~~comptroller of public accounts~~] under this Act, or any other person liabale for gross receipts taxes under this Act, shall compute the taxes by multiplying the gross receipts from the conduct of bingo games by the applicable [~~total~~] tax rate, but may exclude the amount of the exemption provided by Section 21 of this Act [~~$2,500~~] from the gross receipts of bingo games conducted during the reporting period and, for purposes of computing the state tax, may also exclude the total amount or value of bingo prizes awarded by the taxpayer in the tax period.

The amendment was read.

On motion of Senator Harris, the amendment was tabled by the following vote: Yeas 22, Nays 7.

Yeas: Armbrister, Barrientos, Bivins, Brooks, Brown, Caperton, Dickson, Glasgow, Green, Haley, Harris, Henderson, Johnson, Krier, Leedom, McFarland, Parker, Ratliff, Santiesteban, Sims, Uribe, Whitmire.

Nays: Carriker, Edwards, Lyon, Montford, Tejeda, Truan, Zaffirini.

Absent: Washington.

Absent-excused: Parmer.

On motion of Senator Harris and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE
HOUSE BILL 2260 ON THIRD READING

Senator Harris moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 2260** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent: Washington.

Absent-excused: Parmer.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 0. (Same as previous roll call)

MESSAGE FROM THE HOUSE

House Chamber
May 28, 1989

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.C.R. 178, Granting conferees on **S.B. 222** permission to consider certain matters.

The House has adopted the Conference Committee Report on **S.B. 222** by a non-record vote.

The House has refused to concur in Senate amendments to **H.B. 3072** and has requested the appointment of Conference Committee to consider the differences between the two houses. The following have been appointed on the part of the House: Parker, Chair; Smithee, Counts, Oakley, Thomas.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

CONFERENCE COMMITTEE ON HOUSE BILL 3072

Senator Dickson called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 3072** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on **H.B. 3072** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Dickson, Chairman; Whitmire, Parmer, Zaffirini and Sims.

SENATE BILL 253 WITH HOUSE AMENDMENT

Senator Barrientos called **S.B. 253** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Floor Amendment - T. Smith

Amend **S.B. 253** by striking SECTION 2 and inserting the following as SECTIONS 2, 3, and 4:

SECTION 2. The Texas State College and University Employee's Uniform Insurance Benefits Act (Article 3.50-3, Vernon's Texas Insurance Code), is amended by adding Section 11A to read as follows:

Sec. 11A. This section applies to persons who are employed at least 20 hours per week at institutions of higher education but who are not permitted to be members of the Teacher Retirement System of Texas because they are solely employed by an institution of higher education that as a condition of employment requires them to be enrolled as a student in the institution in graduate-level courses. The legislature may provide appropriations to institutions of higher education for the purpose of assisting such employees in purchasing any insurance coverages available under this Act, and the institution of higher education may use any available funds in assisting such employees in purchasing any insurance coverages made available by this Act. Insurance coverages made available to employees covered by this section shall be made available on a year-round basis at a premium

rate equal to premiums paid for insurance coverage by other employees, including state contributions, covered by other provisions of the Act.

SECTION 3. EFFECTIVE DATE. Section 2 of this Act takes effect immediately. Section 1 of this Act takes effect September 1, 1991.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

The amendment was read.

Senator Barrientos moved that the Senate do not concur in the House amendment, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on **S.B. 253** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Barrientos, Chairman; Truan, Uribe, Brooks and Dickson.

SENATE BILL 1067 WITH HOUSE AMENDMENTS

Senator Green called **S.B. 1067** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment - T. Smith

Amend **S.B. 1067** on page 1 by inserting the following between lines 18 and 19.

This section applies only to a retail public utility whose service has been found to be substandard or whose rates have been found to be exorbitant when compared to the rates of the subject municipality by the Texas Water Commission. The Texas Water Commission upon application shall prescribe notice and hold a hearing on these questions in accordance with its rules and make a determination.

The retail public utility shall be entitled to recover its reasonable expenses related to a proceeding hereunder including but not limited to attorney fees, accounting fees and costs of appraisal, if the municipality or franchised utility dismisses its application or in addition to the value of property taken if a proceeding is completed.

Unless otherwise agreed by the retail public utility, the municipality must take the entire utility property of the retail public utility in a proceeding hereunder.

Floor Amendment - Turner

Amend Committee Amendment 1 by substituting the following language for the amendment:

Amend **S.B. 1067** on page 1 by inserting the following between lines 18 and 19.

This section applies only to a retail public utility whose service has been determined to be substandard or whose rates have been determined to be

unreasonable in view of the reasonable expenses of the utility. The Texas Water Commission, upon application, shall prescribe notice and hold a hearing on these questions in accordance with its rules and make a determination.

If the municipality abandons its application, the Court and/or the Texas Water Commission is authorized to award to the retail public utility its reasonable expenses related to the proceeding hereunder, including attorney fees, in addition to the value of property taken if a proceeding is completed.

Unless otherwise agreed by the retail public utility, the municipality must take the entire utility property of the retail public utility in a proceeding hereunder.

The amendments were read.

Senator Green moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on **S.B. 1067** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Green, Chairman; Carriker, Uribe, Zaffirini and Whitmire.

CONFERENCE COMMITTEE REPORT
HOUSE BILL 3168

Senator Dickson submitted the following Conference Committee Report:

Austin, Texas
May 27, 1989

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 3168** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

DICKSON	SCHLUETER
CARRIKER	R. CUELLAR
SIMS	GOOLSBY
BIVINS	
HALEY	
On the part of the Senate	On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1085 ADOPTED

Senator McFarland called from the President's table the Conference Committee Report on **S.B. 1085**. (The Conference Committee Report having been filed with the Senate and read on Friday, May 26, 1989.)

On motion of Senator McFarland, the Conference Committee Report was adopted viva voce vote.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1588 ADOPTED

Senator McFarland called from the President's table the Conference Committee Report on **H.B. 1588**. (The Conference Committee Report having been filed with the Senate and read on Saturday, May 27, 1989.)

On motion of Senator McFarland, the Conference Committee Report was adopted by the following vote: Yeas 29, Nays 0.

Absent: Washington.

Absent-excused: Parmer.

HOUSE BILL 910 ON SECOND READING

On motion of Senator McFarland and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 910, Relating to the legal interception of wire, oral, or electronic communications and to offenses involving the unlawful interception, use, or disclosure of those communications.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 910 ON THIRD READING

Senator McFarland moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 910** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent: Washington.

Absent-excused: Parmer.

The bill was read third time and was passed viva voce vote.

HOUSE BILL 1654 ON SECOND READING

On motion of Senator McFarland and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1654, Relating to public records generated by executive search committees.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 1654 ON THIRD READING

Senator McFarland moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 1654** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 1.

Nays: Caperton.

Absent: Washington.

Absent-excused: Parmer.

The bill was read third time and was passed by the following vote: Yeas 28, Nays 1. (Same as previous roll call)

CONFERENCE COMMITTEE REPORT
SENATE BILL 479

Senator Barrientos submitted the following Conference Committee Report:

Austin, Texas
May 27, 1989

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 479** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

BARRIENTOS	HEFLIN
EDWARDS	A. HILL
DICKSON	VOWELL
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the continuation, powers, and duties of the Commission on Human Rights.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1.02, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1.02. PURPOSES. The general purposes of this Act are:

(1) to provide for the execution of the policies embodied in Title VII of the federal Civil Rights Act of 1964, as amended (42 U.S.C. Section 2000e et

seq.), and to create an authority that meets the criteria under 42 U.S.C. Section 2000e-5(c) and 29 U.S.C. Section 633; and

(2) to secure for persons within the state, including disabled persons, freedom from discrimination in certain transactions concerning employment, and thereby to protect the [~~their interest in~~] personal dignity of persons within the state; and to make available to the state the [~~their~~] full productive capacities of those persons, to secure the state against domestic strife and unrest, to preserve the public safety, health, and general welfare, and to promote the interests, rights, and privileges of persons [~~individuals~~] within the state.

SECTION 2. Subsections (a) and (b), Section 1.04, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) Except as provided by Section 5.04 of this Act, in [~~In~~] this Act, "because of age" or "on the basis of age" refers only to discrimination because of age or on the basis of age against an individual 40 years of age or older [~~and under 70 years of age~~]. Nothing in this Act prohibits the compulsory retirement of any employee who has attained 65 years of age [~~but not 70 years of age~~], and who, for the two-year period immediately before retirement, is employed in a bona fide executive or high policy-making position, if the employee is entitled to an immediate, nonforfeitable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of plans, of the employer of the employee, that equals, in the aggregate, at least $27,000.

(b) In Article 5, "because of disability [~~handicap~~]" or "on the basis of disability [~~handicap~~]" refers to discrimination because of or on the basis of a physical or mental condition that does not impair an individual's ability to reasonably perform a job.

SECTION 3. Section 2.01, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.01. DEFINITIONS. In this Act, unless the context otherwise requires:

(1) "Bona fide occupational qualification" means a qualification:

(A) that is reasonably related to the satisfactory performance of the duties of a job; and

(B) for which there is a factual basis for believing that no [~~a~~] person of the excluded group would be able [~~unable~~] to perform satisfactorily the duties of the job with safety or efficiency.

(2) "Commission" means the Commission on Human Rights created by this Act.

(3) "Commissioner" means a member of the commission.

(4) "Disability" means a mental or physical impairment that substantially limits at least one major life activity or a record of such a mental or physical impairment. The term does not include:

(A) a person with a current condition of addiction to the use of alcohol or any drug or illegal or federally controlled substance; or

(B) a person with a currently communicable disease or infection, including but not limited to acquired immune deficiency syndrome or infection with the human immunodeficiency virus, that constitutes a direct threat to the health or safety of other persons or that makes the affected person unable to perform the duties of the person's employment.

(5) "Disabled" means having a disability.

(6) "Employee" means an individual employed by an employer, including an individual subject to the civil service laws of the state or a political subdivision of the state, except that the term "employee" does not include an individual elected by the qualified voters to public office in the state or a political subdivision of the state, an individual chosen by that officer to be on the officer's

personal staff, an appointee on the policy-making level, or an immediate adviser with respect to the exercise of the constitutional or legal powers of public office.

(7) [~~(5)~~] "Employer" means:

(A) a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year and any agent of that person; or

(B) [~~. The term includes~~] a county or municipality or [~~political subdivision and~~] any state agency or instrumentality, including public institutions of [~~higher~~] education, regardless of the number of individuals employed.

(8) [~~(6)~~] "Employment agency" means a person regularly undertaking, with or without compensation, to procure employees for an employer or to procure for employees opportunities to work for an employer, including an agent of that person.

(9)[~~(7)(A) "Handicapped person" means a person who has a mental or physical handicap, including mental retardation, hardness of hearing, deafness, speech impairment, visual handicap, being crippled, or any other health impairment that requires special ambulatory devices or services, as defined in Section 121.002(4), Human Resources Code, but does not include a person because he is addicted to any drug or illegal or federally controlled substances or because he is addicted to the use of alcohol.~~

[~~(B) "Handicap" means a condition either mental or physical that includes mental retardation, hardness of hearing, deafness, speech impairment, visual handicap, being crippled, or any other health impairment that requires special ambulatory devices or services, as defined in Section 121.002(4), Human Resources Code, but does not include a condition of addiction to any drug or illegal or federally controlled substances or a condition of addiction to the use of alcohol.~~

[~~(8)~~] "Labor Organization" means a labor organization engaged in an industry affecting commerce, and includes:

(A) any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment;

(B) any conference, general committee, joint or system board, or joint council so engaged that is subordinate to a national or international labor organization; and

(C) an agent of a labor organization.

(10) [~~(9)~~] "Local commission" means a commission on human relations created by one or more political subdivisions.

(11) [~~(10)~~] "National origin" includes the national origin of an ancestor.

(12) [~~(11)~~] "Person" means one or more individuals or an association, corporation, joint-stock company, labor union, legal representative, mutual company, partnership, receiver, trust, trustee, trustee in bankruptcy, unincorporated organization, the state, or a political subdivision or agency of the state.

(13) [~~(12)~~] "Political subdivision" means a county or municipality [~~an incorporated city or town~~].

(14) [~~(13)~~] "Religion" means all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable reasonably to accommodate the religious observance or practice of an employee or applicant without undue hardship on the conduct of the employer's business.

SECTION 4. Section 3.01, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and by adding Subsections (e) and (f) to read as follows:

(a) There is created the Commission on Human Rights to consist of six members. The governor shall appoint the commissioners with the advice and consent of the senate and designate one of the commissioners as chairman of the commission. One member of the commission shall be a representative of industry, one member shall be a representative of labor, and four members shall be representatives of the general public [~~appointed at large~~]. In making appointments, the governor shall strive to achieve representation on the commission that is diverse with respect to disability, religion, age, economic status, sex, race, and ethnicity.

(e) A person is not eligible for appointment as a public member of the commission if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization receiving funds from the commission;

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization receiving funds from the commission; or

(3) uses or receives a substantial amount of tangible goods, services, or funds from the commission, other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses.

(f) A person may not serve as a member of the commission or act as the general counsel to the commission if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the commission.

SECTION 5. The Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes) is amended by adding Section 3.011 to read as follows:

Sec. 3.011. REMOVAL OF COMMISSION MEMBERS. (a) It is a ground for removal from the commission if a member:

(1) does not have at the time of appointment the qualifications required by Subsection (a) or (e) of Section 3.01 of this Act;

(2) does not maintain during service on the commission the qualifications required by Subsection (a) or (e) of Section 3.01 of this Act;

(3) violates a prohibition established by Subsection (f) of Section 3.01 of this Act;

(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or

(5) is absent for more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the commission.

(b) The validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a commission member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the chairman of the commission of the ground. The chairman shall then notify the governor that a potential ground for removal exists.

SECTION 6. Section 3.02, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3.02. POWERS OF COMMISSION. (a) The commission has the following powers:

(1) to maintain an office in the city of Austin;

(2) to meet and exercise its powers at any place within the state[~~; except in any political subdivision having a local commission as described in Section 4.02 of this Act~~];

(3) to employ an executive director and authorize the employment of other staff members, including any necessary attorneys or clerks and other representatives or agents, and to fix the compensation of the executive director or other staff members, representatives, or agents;

(4) to promote the creation of local commissions on human rights and to cooperate or contract with individuals or state, local, or other agencies, both public and private, including agencies of the federal government and of other states;

(5) to accept public grants or private gifts, bequests, or other payments;

(6) to receive, investigate, seek to conciliate, and pass on complaints alleging violations of this Act, and file civil actions to effectuate the purposes of this Act;

(7) to request and, if necessary, compel by subpoena the attendance of necessary witnesses for examination under oath or affirmation, and the production, for inspection and copying, of records, documents, and other evidence relevant to the investigation of alleged violations of this Act. The commission by rule may authorize a commissioner or one of its staff to exercise the powers stated in this subdivision on behalf of the commission;

(8) to furnish technical assistance requested by a person subject to this Act to further compliance with the Act or with rules or orders issued under this Act;

(9) to render at least annually a comprehensive written report to the governor and to the legislature, which report may contain recommendations of the commission for legislative or other action to carry out the purposes and policies of this Act; and

(10) to adopt, issue, amend, and rescind procedural rules to carry out the purposes and policies of this Act.

(b) The commission shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the commission during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act.

(c) The commission shall prepare and maintain a written plan that describes how a disabled person or a person who does not speak English can be provided reasonable access to the commission's programs.

(d) The commission shall develop on a biennial basis an inventory of equal employment opportunity policies and programs adopted and implemented by the various state agencies. The commission shall conduct studies of the policies and programs of selected state agencies if directed to do so by a resolution of the legislature or by an executive order of the governor.

SECTION 7. Section 3.03, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3.03. SUNSET PROVISION. The Commission on Human Rights is subject to the Texas Sunset Act (Chapter 325, Government Code). Unless continued in existence as provided by that Act, the commission is abolished September 1, 2001 ~~[1989]~~.

SECTION 8. The Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes) is amended by adding Sections 3.04 and 3.05 to read as follows:

Sec. 3.04. PERSONNEL. (a) The executive director or the executive director's designee shall develop an intraagency career ladder program. The program shall require intraagency posting of all nonentry level positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations. All merit pay for commission employees must be based on the system established under this subsection.

(c) The commission shall provide to its members and employees, as often as necessary, information regarding their qualifications for office or employment under this Act and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(d) The executive director or the executive director's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies related to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(2) a comprehensive analysis of the commission work force that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underutilization in the commission work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of significant underutilization.

(e) A policy statement prepared under Subsection (d) must cover an annual period, be updated not less than annually, and be filed with the governor's office.

(f) The governor's office shall develop a biennial report to the legislature based on the information received under Subsection (e). The report may be made separately or as a part of other biennial reports made to the legislature.

(g) The commission shall develop and implement policies that clearly define the respective responsibilities of the commission and the staff of the commission.

Sec. 3.05. PUBLIC INTEREST INFORMATION AND COMPLAINTS. (a) The commission shall prepare information of public interest describing the functions of the commission and the commission's procedures by which complaints are filed with and resolved by the commission. The commission shall make the information available to the public and appropriate state agencies.

(b) If a written complaint is filed with the commission that the commission has authority to resolve, the commission, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation by another agency of the state, federal, or local government.

(c) The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission.

SECTION 9. Section 4.02, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.02. LOCAL COMMISSIONS. A political subdivision or two or more political subdivisions acting jointly may create a local commission to promote the purposes of this Act and to secure for all individuals within the jurisdiction of the political subdivision or subdivisions freedom from discrimination because of race, color, disability [~~handicap~~], religion, sex, national origin, or age and may appropriate funds for the expenses of the local commission.

SECTION 10. Subsection (a), Section 4.04, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The state commission shall refer a complaint filed with it to a local commission with the necessary investigatory and conciliatory powers if the complaint concerns discrimination in employment because of race, color, disability [~~handicap~~], religion, sex, national origin, or age, and:

(1) the complaint has been referred to the state commission by the federal government; or

(2) the jurisdiction over the subject matter of the complaint has been deferred to the state commission by the federal government.

SECTION 11. Section 5.01, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5.01. EMPLOYERS. It is an unlawful employment practice for an employer:

(1) to fail or refuse to hire or to discharge an individual or otherwise to discriminate against an individual with respect to compensation or the terms, conditions, or privileges of employment because of race, color, disability [~~handicap~~], religion, sex, national origin, or age; or

(2) to limit, segregate, or classify an employee or applicant for employment in a way that would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect the status of an employee because of race, color, disability [~~handicap~~], religion, sex, national origin, or age.

SECTION 12. Section 5.02, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5.02. EMPLOYMENT AGENCIES. It is an unlawful employment practice for an employment agency to fail or refuse to refer for employment or otherwise to discriminate against an individual because of race, color, disability [~~handicap~~], religion, sex, national origin, or age, or to classify or refer for employment an individual on the basis of race, color, disability [~~handicap~~], religion, sex, national origin, or age.

SECTION 13. Section 5.03, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5.03. LABOR ORGANIZATIONS. It is an unlawful employment practice for a labor organization:

(1) to exclude or to expel from membership or otherwise to discriminate against an individual because of race, color, disability [~~handicap~~], religion, sex, national origin, or age;

(2) to limit, segregate, or classify members or applicants for membership or to classify or to fail or refuse to refer for employment an individual because of race, color, disability [~~handicap~~], religion, sex, national origin, or age in a way:

(A) that would deprive or tend to deprive an individual of employment opportunities; or

(B) that would limit employment opportunities or otherwise adversely affect the status of an employee or of an applicant for employment; or

(3) that would cause or attempt to cause an employer to violate this article.

SECTION 14. Section 5.04, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5.04. TRAINING PROGRAMS. (a) Unless the training or retraining opportunities or programs are provided under an affirmative action plan approved according to federal law, rule, or order, it is an unlawful employment practice for an employer, labor organization, or joint labor-management committee controlling an apprenticeship, on-the-job, or other training or retraining program to discriminate against an individual because of disability, age, race, color, religion, sex, or national origin in admission to or participation in a program established to provide apprenticeship, on-the-job, or other training or retraining opportunities.

(b) For the purposes of this section, "because of age" refers only to discrimination because of age against an individual who is at least 40 years of age but younger than 56 years of age.

SECTION 15. Subsection (b), Section 5.05 (1), Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) Unless disability [~~handicap~~], religion, sex, national origin, or age is a bona fide occupational qualification, it is an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee controlling an apprenticeship, on-the-job, or other training or retraining program to print or publish or cause to be printed or published a notice or advertisement relating to employment indicating a preference, limitation, specification, or discrimination based on race, color, disability [~~handicap~~], religion, sex, national origin, or age, if the notice or advertisement concerns an employee's status, employment, or admission to or membership or participation in a labor union or an apprenticeship, on-the-job, or other training or retraining program.

SECTION 16. Subsection (a), Section 5.07, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Notwithstanding any other provision of this article, it is not an unlawful employment practice:

(1) for an employer to hire and to employ employees, for an employment agency to classify or refer for employment an individual, for a labor organization to classify its members or to classify or refer for employment an individual, or for an employer, labor organization, or joint labor-management committee controlling an apprenticeship, on-the-job, or other training or retraining program to admit or employ an individual in its program, on the basis of disability [~~handicap~~], religion, sex, national origin, or age, if disability [~~handicap~~], religion, sex, national origin, or age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or enterprise;

(2) for a religious corporation, association, society, or educational institution or an educational organization operated, supervised, or controlled, in whole or in substantial part, by a religious corporation, association, or society to limit employment or give preference to members of the same religion;

(3) for an employer to apply different standards of compensation or different terms, conditions, or privileges of employment under a bona fide seniority system, bona fide merit system, or a bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade this Act, or under a system that measures earnings by quantity or quality of production if those different standards are not discriminatory on the basis of race, color, disability [~~handicap~~], religion, sex, national origin, or age, except that no employee benefit plan may excuse a failure to hire on the basis of age and no seniority or employee benefit plan may require or permit involuntary retirement on the basis of age;

(4) for an employer to apply to employees who work in different locations different standards of compensation or different terms, conditions, or privileges of employment if those different standards are not discriminatory on the basis of race, color, disability [~~handicap~~], religion, sex, national origin, or age;

(5) for an employer to impose minimum or maximum age requirements for peace officers or fire fighters;

(6) for a public school official to adopt or implement a plan reasonably designed to end discriminatory school practices; or

(7) for an employer to engage in any practice that has a discriminatory effect and that would otherwise be prohibited by this Act if the employer establishes that the practice is not intentionally devised or operated to contravene the prohibitions of this Act and is justified by business necessity.

SECTION 17. Section 5.09, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5.09. IMBALANCE PLANS. This Act may not be interpreted to require a person subject to this Act to grant preferential treatment to an individual or to a group on the basis of the race, color, disability [~~handicap~~], religion, sex, national origin, or age of that individual or group because an imbalance exists between the

total number or percentage of persons of that individual's or group's race, color, disability [~~handicap~~], religion, sex, national origin, or age employed by an employer, referred or classified for employment by an employment agency or labor organization, admitted to membership or classified by a labor organization, or admitted to or employed in any apprenticeship, on-the-job, or other training or retraining program, and the total number or percentage of persons of that race, color, disability [~~handicap~~], religion, sex, national origin, or age in any community, this state, region, or other area, or in the available work force in any community, this state, region, or other area.

SECTION 18. Subsection (d), Section 6.01, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) A showing of undue hardship by the respondent is a defense to a complaint of discrimination made by an employee or applicant based on disability [~~handicap~~]. With respect to a complaint based on disability [~~handicap~~], the commission's order must take into account the reasonableness of the cost of any necessary work place accommodation and the availability of alternatives or other appropriate relief.

SECTION 19. Section 7.01, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended by amending Subsections (a), (d), (e), and (f) and by adding Subsection (i) to read as follows:

(a) If the commission has made a determination that there is reasonable cause to believe that the respondent has engaged in an unlawful employment practice, and the commission's efforts to resolve the discriminatory practice to the satisfaction of the complainant and respondent through conciliation have been unsuccessful, the commission may bring a civil action against the respondent named in the charge if a majority of the commissioners determine that the civil action may effectuate the purposes of this Act. The complainant has the right to intervene in a civil action brought by the commission. If the complaint filed with the commission pursuant to Section 6.01 of this Act is dismissed by the commission, or is not resolved before the expiration of the 180th day [~~if within 180 days~~] after the date of filing of the complaint [~~the commission has not filed a civil action under this section or has not successfully negotiated a conciliation agreement between the complainant and respondent~~], the commission shall so inform [~~notify~~] the complainant in writing by certified mail. A complainant who is so informed is entitled to request from the commission a written notice of the complainant's right to file a civil action. The complainant must request the notice in writing. On receipt of a written request by a complainant, the commission shall issue the notice of the right to file a civil action before the expiration of the 180th day after the date the complaint was filed if the complainant alleges an unlawful employment practice based on the complainant's status as an individual with a life-threatening illness, as confirmed in writing by a physician licensed to practice medicine in this state, or if the executive director certifies that administrative processing of the complaint cannot be completed before the expiration of the 180th day after the date the complaint was filed. The commission shall issue the expedited notice by certified mail not later than the fifth business day after the date the commission receives the written request. The executive director may issue the notice on behalf of the commission. Within 60 days after the date of receipt of the notice, a civil action may be brought by the complainant against the respondent named in the charge. After timely application, the court may in its discretion permit the commission to intervene in any civil action filed under this subsection on certification that the case is of general public importance and if the commission has, before commencement of the civil action by the complainant, issued a determination of reasonable cause to believe that the Act has been violated. In no event may any action be brought pursuant to this article more than one year after the date of filing of the complaint to which the action relates.

(d) Additional equitable relief may include but is not limited to:

(1) the hiring or reinstatement, with or without back pay, but back pay liability may not accrue for any date more than two years before the date of filing of a complaint with the commission, and interim earnings, workers' compensation benefits, and unemployment compensation benefits received shall operate to reduce the back pay otherwise allowable;

(2) the upgrading of employees with or without pay;

(3) the admission or restoration of union membership;

(4) the admission to or participation in a guidance program, apprenticeship, on-the-job, or other training or retraining program, with the use of objective job-related criteria in the admission of individuals to these programs;

(5) the reporting on the manner of compliance with the terms of a final order issued under this Act; and

(6) the payment of court costs.

(e) In any action or proceeding under this Act, the court in its discretion may allow the prevailing party, other than the commission, a reasonable attorney's fee as part of the costs. The state or an agency or a political subdivision of the state is liable for costs, including attorney's fees, to the same extent as a private person[; ~~except that the state, a state agency, or a political subdivision is not liable for attorney's fees~~].

(f) In the case of disabled [~~handicapped~~] employees or applicants, the court must take into account the undue hardship defense, including the reasonableness of the cost of any necessary work place accommodation and the availability of alternatives or other appropriate relief.

(i) A failure to issue the notice of the complainant's right to file a civil action does not affect a complainant's right under Subsection (a) of this section to bring a civil action against the respondent.

SECTION 20. Subsection (a), Section 8.02, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) An officer or employee of the commission may not make public any information obtained by the commission under its authority under Section 6.01 of this Act except as necessary to the conduct of a proceeding under this Act. The commission shall adopt rules that allow a party to a complaint filed under Section 6.01 reasonable access to the commission records relating to the complaint. Unless the complaint is resolved through a voluntary settlement or conciliation, the executive director shall, on the written request of a party, allow the party access to the commission records:

(1) following the final action of the commission; or

(2) if a civil action relating to the complaint has been filed in federal court alleging a violation of federal law.

SECTION 21. Section 10.04, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is repealed.

SECTION 22. (a) This Act takes effect September 1, 1989.

(b) The changes in law made by this Act in the qualifications of members of the Commission on Human Rights apply only to a member appointed on or after September 1, 1989.

(c) The first policy statement required to be filed under Subsection (e), Section 3.04, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), as added by this Act, must be filed before November 1, 1989.

SECTION 23. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

HOUSE BILL 2887 ON SECOND READING

On motion of Senator Ratliff and by unanimous consent, the regular order of business and Senate Rule 5.14 were suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2887, Relating to a requirement that certain peace officers display a badge and wear a certain uniform while enforcing traffic laws.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 2887 ON THIRD READING

Senator Ratliff moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 2887** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent: Washington.

Absent-excused: Parmer.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 0. (Same as previous roll call)

MESSAGE FROM THE HOUSE

House Chamber
May 28, 1989

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 558**. The following have been appointed on the part of the House: Hightower, Chair; S. Johnson, Williamson, Telford, Granoff.

The House has adopted the Conference Committee Reports on the following bills by non-record votes:

S.B. 40
S.B. 24
S.B. 1085

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

CONFERENCE COMMITTEE REPORT HOUSE BILL 2603

Senator Glasgow submitted the following Conference Committee Report:

Austin, Texas
May 28, 1989

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 2603** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

GLASGOW	LANEY
CARRIKER	PERRY
HALEY	GAVIN
RATLIFF	
DICKSON	
On the part of the Senate	On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

COMMITTEE SUBSTITUTE HOUSE BILL 2600 ON SECOND READING

On motion of Senator Brooks and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 2600, Relating to the regulation of massage therapy; providing criminal penalties.

The bill was read second time and was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 2600 ON THIRD READING

Senator Brooks moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 2600** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent: Washington.

Absent-excused: Parmer.

The bill was read third time and was passed viva voce vote.

HOUSE BILL 2816 ON SECOND READING

On motion of Senator Barrientos and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2816, Relating to a pilot program for effective education programs to improve students' academic performance.

The bill was read second time.

Senator Edwards offered the following amendment to the bill:

Amend **H.B. 2816** by adding a new section, to be numbered appropriately, to read as follows:

SECTION _____. Subsection (c), Section 51.603, Education Code, is amended to read as follows:

(c) For any biennium the legislature may not appropriate to the fund an amount that exceeds the total amount of donations from private sources to the fund and to eligible programs during the preceding biennium.

The amendment was read and was adopted viva voce vote.

On motion of Senator Barrientos and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 2816 ON THIRD READING

Senator Barrientos moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 2816** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent: Washington.

Absent-excused: Parmer.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 0. (Same as previous roll call)

HOUSE BILL 2201 ON SECOND READING

On motion of Senator Whitmire and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2201, Relating to the printing and correction of ballots; providing criminal penalties.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 2201 ON THIRD READING

Senator Whitmire moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 2201** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent: Washington.

Absent-excused: Parmer.

The bill was read third time and was passed viva voce vote.

COMMITTEE SUBSTITUTE
HOUSE BILL 3042 ON SECOND READING

On motion of Senator Santiesteban and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 3042, Relating to suits brought against a nursing home or related institution for retaliation based on reports of abuse or neglect.

The bill was read second time.

Senator Edwards offered the following amendment to the bill:

Amend **C.S.H.B. 3042** as follows:

(1) Add the following as the new SECTION 1 of the bill and renumber the existing SECTIONS of the bill appropriately. Renumber SECTION 1 as SECTION .

SECTION 1. Section 16(a)(2), Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442c, Vernon's Texas Civil Statutes), is amended to read as follows:

(2) Each institution employee shall be required to sign a statement that he or she realizes his or her criminal liability for failure to report such abuses and his or her rights under Section 16(i) of this Act as a condition of employment by the institution. If the employer does not require the employee to read and sign this statement, then the requirement under Section 16(i)(3) of this Act that an action or notice of action under Section 16(i) of this Act must be commenced within 90 days does not apply, and the employee may bring suit within 2 years.

The amendment was read and was adopted viva voce vote.

On motion of Senator Santiesteban and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 3042 ON THIRD READING

Senator Santiesteban moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 3042** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent: Washington.

Absent-excused: Parmer.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 0. (Same as previous roll call)

CONFERENCE COMMITTEE REPORT HOUSE BILL 708

Senator Barrientos submitted the following Conference Committee Report:

Austin, Texas
May 27, 1989

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 708** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

BARRIENTOS	PERRY
WHITMIRE	LANEY
GREEN	MADLA

CARTER
B. HUNTER
On the part of the Senate On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

HOUSE BILL 2247 ON SECOND READING

On motion of Senator Dickson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2247, Relating to the transfer of certain misdemeanor cases from a county court to a district court or a county court at law with an attorney presiding as judge.

The bill was read second time.

Senator Dickson offered the following amendment to the bill:

Amend **H.B. 2247** by adding the following language at the end of line 18:

Provided, in no case may any such case be transferred to a district court except with the written consent of the judge of the district court to which transfer is sought.

The amendment was read and was adopted viva voce vote.

On motion of Senator Dickson and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 2247 ON THIRD READING

Senator Dickson moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 2247** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent: Washington.

Absent-excused: Parmer.

The bill was read third time and was passed viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 1790 ON SECOND READING

On motion of Senator Brooks and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1790, Relating to the physician-patient confidentiality privilege and to creating an exemption for certain records concerning a child abuse investigation.

The bill was read second time.

Senator Parker offered the following amendment to the bill:

Amend **C.S.H.B. 1790** as follows:

Section 1. Add subsection (o) to read as follows:

(o) In the event a magistrate gives confidential information to any law enforcement agency or personnel under subsection (h) of this section, the defendant

in any subsequent criminal proceeding under this Article shall be given full access to the same records under the same guidelines of confidentiality as provided for the law enforcement agency or personnel.

The amendment was read and was adopted viva voce vote.

On motion of Senator Brooks and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 1790 ON THIRD READING

Senator Brooks moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 1790** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent: Washington.

Absent-excused: Parmer.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 0. (Same as previous roll call)

(President in Chair)

COMMITTEE SUBSTITUTE HOUSE JOINT RESOLUTION 36 ON SECOND READING

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.J.R. 36, Proposing a constitutional amendment to abolish the office of county treasurer in Webb County.

The resolution was read second time.

Senator Krier offered the following amendment to the resolution:

Floor Amendment No. 1

Amend **C.S.H.J.R. 36** by striking all below the resolving clause and substituting the following:

SECTION 1. Article XVI, Section 44, of the Texas Constitution is amended to read as follows:

Sec. 44. (a) Except as otherwise provided by this section, the Legislature shall prescribe the duties and provide for the election by the qualified voters of each county in this State, of a County Treasurer and a County Surveyor, who shall have an office at the county seat[;] and hold their office for four years, and until their successors are qualified[;] and shall have such compensation as may be provided by law.

(b) The office of County Treasurer or the office of County Surveyor that was abolished in a county in accordance with this section as it existed before January 1, 1990, remains abolished. The functions and records of the abolished office are transferred in accordance with this section as it existed on the date of the abolition, and the former constitutional provision remains in effect for this purpose.

(c)(1) An office of County Treasurer or an office of County Surveyor not covered by Subsection (b) of this section is abolished in a county if the abolition is

approved by a majority of the votes received at an election ordered under this subsection. The Commissioners Court of the county shall order the election in the county if the court is petitioned to do so by the voters of the county. A petition must:

(A) be filed in the office of the County Judge of the county;

(B) state that it is intended to require an election in the county on the question of abolishing the office of County Treasurer or the office of County Surveyor, or both offices;

(C) be signed by a number of registered voters of the county equal to at least 10 percent of the number of votes received for Governor in the county in the most recent gubernatorial general election;

(D) contain the date of signing, current voter registration number, printed name, and residence address, including zip code, for the required number of signers; and

(E) be signed by the required number of signers during the 60 days preceding the date the petition is filed in the office of the County Judge.

(2) Within five days after the date a petition is received in the office of the County Judge, the judge shall submit the petition for verification to the County Clerk. The County Clerk shall determine whether the petition meets the requirements imposed by this subsection. Within 30 days after the date the petition is submitted to the County Clerk for verification, the clerk shall certify in writing to the Commissioners Court whether the petition is valid or invalid. If the County Clerk certifies that the petition is invalid, the clerk shall state in the certification the reasons for that determination. If the County Clerk certifies that the petition is valid, the Commissioners Court shall order the election to be held on the next authorized election date that occurs after the 30th day after the date the court receives the clerk's certification.

(3) If only the office of County Treasurer is the subject of the petition, the Commissioners Court shall order the ballot for the election to be printed to provide for voting for or against the proposition: "Abolishing the office of county treasurer." If only the office of County Surveyor is the subject of the petition, the Commissioners Court shall order the ballot for the election to be printed to provide for voting for or against the proposition: "Abolishing the office of county surveyor." If both offices are the subject of the petition, the Commissioners Court shall order the ballot for the election to be printed to provide for separate voting for or against each of those propositions.

(4) The abolition of the office takes effect on the January 1 following the date of the election. After the abolition of the office of County Treasurer, the Commissioners Court shall designate one or more county officers or employees to perform the functions prescribed by law for the County Treasurer and to take possession of the records of the abolished office. After the abolition of the office of County Surveyor, the Commissioners Court shall, if necessary, employ or contract with a qualified person to perform any of the functions that would have been performed by the County Surveyor if the office had not been abolished and shall designate one or more county officers or employees to take possession of the records of the abolished office. The Commissioners Court may, from time to time, change a designation it makes under this subdivision. [~~The office of County Treasurer in the counties of Tarrant and Bee is abolished and all the powers, duties, and functions of the office in each of these counties are transferred to the County Auditor or to the officer who succeeds to the auditor's functions. The office of County Treasurer in the counties of Bexar and Collin are abolished and all the powers, duties, and functions of the office in each of these counties are transferred to the County Clerk. However, the office of County Treasurer shall be abolished in the counties covered by this subsection only after a local election has been held in~~

~~each county and the proposition "to abolish the elective office of county treasurer" has passed by a majority of those persons voting in said election.~~

~~[(c) The office of County Treasurer in the counties of Andrews and Gregg is abolished. In Andrews County, the powers, duties, and functions of the office are transferred to the County Auditor of the county or to the officer who succeeds to the auditor's functions. In Gregg County, the functions of the office are transferred to an elected official or the County Auditor as designated by the Commissioners Court, and the Commissioners Court may *from time to time change its designation* as it considers appropriate.~~

~~[(d) The office of County Treasurer in the counties of El Paso and Fayette is abolished. In El Paso County, the Commissioners Court may employ or contract with a qualified person or may designate another county officer to perform any of the functions that would have been performed by the County Treasurer if the office had not been abolished. In Fayette County, *the functions of the abolished office* are transferred to the County Auditor or to the officer who succeeds to the auditor's functions. However, the office of County Treasurer in El Paso or Fayette County is abolished under this subsection only if, at the statewide election at which the constitutional amendment providing for the abolition of the office in that county is submitted to the voters, a majority of the voters of that county voting on the question at that election *favor the amendment*.~~

~~[(e) The office of County Surveyor in the counties of Denton, Randall, Collin, Dallas, El Paso, and Henderson is abolished upon the approval of the abolition by a majority of the qualified voters of the respective county voting on the question at an election that the Commissioners Court of the county may call. If the election is called, the Commissioners Court shall order the ballot at the election to be printed *to provide for voting for or against the proposition: "Abolishing* the office of county surveyor." Each qualified voter of the county is entitled to vote in the election. If the office of County Surveyor is abolished under this subsection, the maps, field notes, and other records in the custody of the County Surveyor are transferred to the County Clerk of the county. After abolition, the Commissioners Court may employ or contract with a qualified person to perform any of the functions that *would have been performed by the County Surveyor if the office had not been* abolished.~~

~~[(g) The office of County Treasurer in Nueces County is abolished and all powers, duties, and functions of this office are transferred to the County Clerk. However, the office of County Treasurer in Nueces County is abolished under this subsection only if, at the statewide election at which this amendment is submitted to the voters, a majority of the voters of Nueces County voting on the question at that election favor the amendment. The office of County Treasurer of Nueces County is abolished on January 1, 1988, if the conditions of this subsection are met. If that office in Nueces County is not abolished, this subsection expires on January 1, 1988.]~~

SECTION 2. The following temporary provision is added to the Texas Constitution:

TEMPORARY PROVISION. The constitutional amendment proposed by the 71st Legislature, Regular Session, 1989, permitting the voters of a county to abolish, at a local option election, the office of county treasurer and the office of county surveyor, takes effect January 1, 1990. This provision expires January 2, 1990.

SECTION 3. This proposed amendment shall be submitted to the voters at an election to be held on November 7, 1989. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment to permit the voters of a county to abolish, at a local option election, the office of county treasurer and the office of county surveyor."

The amendment was read.

On motion of Senator Krier and by unanimous consent, the amendment was withdrawn.

Senator Caperton offered the following amendment to the resolution:

Floor Amendment No. 2

Amend **C.S.H.J.R. 36** as follows:

On page 1, line 28, after the words "the counties of" add "Colorado,".

On page 1, line 35, after the word "functions" add the following language:

". In Colorado County, the functions of the abolished office are transferred to the County Auditor".

Insert additional Subsection (i) to read as follows:

"The office of County Treasurer in Colorado County is abolished under Subsection (d) of this section on January 1, 1990, if the conditions of that subsection are met. This subsection expires on January 2, 1991."

The amendment was read and failed of adoption by the following vote: Yeas 9, Nays 15.

Yeas: Bivins, Caperton, Carriker, Haley, Johnson, Krier, Ratliff, Sims, Truan.

Nays: Armbrister, Barrientos, Brooks, Dickson, Edwards, Glasgow, Green, Harris, Leedom, Lyon, Santiesteban, Tejeda, Uribe, Whitmire, Zaffirini.

Absent: Brown, Henderson, McFarland, Montford, Parker, Washington.

Absent-excused: Parmer.

The resolution was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE JOINT RESOLUTION 36 ON THIRD READING

Senator Zaffirini moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.J.R. 36** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 2.

Yeas: Armbrister, Barrientos, Bivins, Brooks, Brown, Caperton, Carriker, Dickson, Edwards, Green, Haley, Harris, Henderson, Johnson, Leedom, Lyon, McFarland, Montford, Ratliff, Santiesteban, Sims, Tejeda, Truan, Uribe, Whitmire, Zaffirini.

Nays: Glasgow, Krier.

Absent: Parker, Washington.

Absent-excused: Parmer.

The resolution was read third time and was passed by the following vote: Yeas 26, Nays 2. (Same as previous roll call)

MESSAGE FROM THE HOUSE

House Chamber
May 28, 1989

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

The House has refused to concur in Senate amendments to **H.B. 1425** and has requested the appointment of a Conference Committee to consider the differences between the two houses. The following have been appointed on the part of the House: Connelly, Chair; Hury, Schlueter, Saunders, Stiles.

The House has refused to concur in Senate amendments to **H.B. 1594** and has requested the appointment of a Conference Committee to consider the differences between the two houses. The following have been appointed on the part of the House: Gavin, Chair; Shea, Counts, Brimer, Taylor.

The House has concurred in Senate amendments to the following bills by non-record votes:

H.B. 188
H.B. 878
H.B. 1345
H.B. 2352
H.B. 1689
H.B. 1728
H.B. 1779
H.B. 2211
H.B. 2017
H.B. 2116
H.B. 2297

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

HOUSE BILL 2475 ON SECOND READING

On motion of Senator Santiesteban and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2475, Relating to the reinstatement of the "storage and use exclusion" for property to be transported outside the state for use solely outside the state.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 2475 ON THIRD READING

Senator Santiesteban moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 2475** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent: Washington.

Absent-excused: Parmer.

The bill was read third time and was passed viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 2489 ON SECOND READING

On motion of Senator Green and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 2489, Relating to the creation of the offense of making silent or abusive calls to a 9-1-1 service.

The bill was read second time and was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 2489 ON THIRD READING

Senator Green moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 2489** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent: Parker, Washington.

Absent-excused: Parmer.

The bill was read third time and was passed viva voce vote.

HOUSE BILL 2181 ON SECOND READING

On motion of Senator Haley and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2181, Relating to public school textbooks.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 2181 ON THIRD READING

Senator Haley moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 2181** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent: Parker, Washington.

Absent-excused: Parmer.

The bill was read third time and was passed viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 2192 ON SECOND READING

Senator Haley, on behalf of Senate Parker, moved to suspend the regular order of business to take up for consideration at this time:

C.S.H.B. 2192, Relating to the frequency of accreditation and program compliance inspections.

The motion prevailed by the following vote: Yeas 21, Nays 1.

Nays: Green.

Absent: Armbrister, Brown, Caperton, Harris, Montford, Parker, Uribe, Washington.

Absent-excused: Parmer.

The bill was read second time.

Senator Green offered the following amendment to the bill:

Amend **C.S.H.B. 2192** by striking Section 6, Section 7 and Section 8 and renumbering the following Sections.

The amendment was read.

On motion of Senator Haley, the amendment was tabled by the following vote: Yeas 20, Nays 5.

Yeas: Armbrister, Barrientos, Bivins, Brooks, Caperton, Carriker, Dickson, Edwards, Glasgow, Haley, Johnson, Krier, McFarland, Ratliff, Santiesteban, Sims, Tejeda, Truan, Uribe, Zaffirini.

Nays: Green, Henderson, Leedom, Lyon, Whitmire.

Absent: Brown, Harris, Montford, Parker, Washington.

Absent-excused: Parmer.

The bill was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE
HOUSE BILL 2192 ON THIRD READING

Senator Haley, on behalf of Senator Parker, moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 2192** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 24, Nays 1.

Nays: Green.

Absent: Brown, Harris, Montford, Parker, Washington.

Absent-excused: Parmer.

The bill was read third time and was passed by the following vote: Yeas 24, Nays 1. (Same as previous roll call)

CONFERENCE COMMITTEE REPORT
HOUSE BILL 983

Senator Parker submitted the following Conference Committee Report:

Austin, Texas
May 28, 1989

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 983** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

PARKER	GRUSENDORF
HALEY	BERLANGA
TRUAN	HAMMOND
BARRIENTOS	ARNOLD
BROOKS	G. LUNA
On the part of the Senate	On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE ON HOUSE BILL 1425

Senator Caperton called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 1425** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **H.B. 1425** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Caperton, Chairman; McFarland, Montford, Glasgow and Johnson.

MESSAGE FROM THE HOUSE

House Chamber
May 28, 1989

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

The House has refused to concur in Senate amendments to **H.B. 2541** and has requested the appointment of a Conference Committee to consider the differences between the two houses. The following have been appointed on the part of the House: P. Hill, Chair; Harris of Tarrant, Uher, Seidlits, Parker.

The House has refused to concur in Senate amendments to **H.B. 3183** and has requested the appointment of a Conference Committee to consider the differences between the two houses. The following have been appointed on the part of the House: McWilliams, Chair; Perry, Yost, Holzheauser, Hollowell.

The House has refused to concur in Senate amendments to **H.B. 3109** and has requested the appointment of a Conference Committee to consider the differences between the two houses. The following have been appointed on the part of the House: Stiles, Chair; Campbell, Hightower, Soileau, Willy.

The House has concurred in Senate amendments to the following House bills by non-record votes:

H.B. 1954
H.B. 1978
H.B. 3039
H.B. 3012
H.B. 3144

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

CONFERENCE COMMITTEE REPORT
HOUSE BILL 1822

Senator Green submitted the following Conference Committee Report:

Austin, Texas
May 28, 1989

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 1822** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

GREEN	GAVIN
KRIER	BRIMER
EDWARDS	SHEA
WHITMIRE	COUNTS
	TALLAS
On the part of the Senate	On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

RECESS

On motion of Senator Brooks, the Senate at 4:32 p.m. took recess until 7:00 p.m. today.

AFTER RECESS

The Senate met at 7:00 p.m. and was called to order by the President.

The Reverend Chris Steele, Chaplain, St. Luke's Hospital and Texas Heart Institute, Houston, offered the invocation as follows:

Grace to you and peace. Let us pray.

O God of unchangeable power and eternal might, look down upon this gathered assembly, upon every public servant, upon every citizen observer. By the effectual working of Your Providence, carry out in tranquility Your plan for salvation. Let each of us and the whole world see and know that things which were cast down are being raised up, that things which have grown old are being made new and that all things are being brought to perfection by Your will—by You who creates all, who loves all, who redeems all, who forgives all and who gives us peace. Amen.

LEAVES OF ABSENCE

Senator Parker was granted leave of absence for the remainder of today on account of important business on motion of Senator Brooks.

Senator Washington was granted leave of absence for the remainder of today on account of important business on motion of Senator Brooks.

MESSAGE FROM THE HOUSE

House Chamber
May 28, 1989

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

H.C.R. 291, Honoring Ben J. Taylor.

H.C.R. 290, Commending M.A.R.K. on its effort to combat drug abuse.

H.C.R. 292, Congratulating Andy Turner.

H.C.R. 293, Congratulating Nita and Cliff Johnson.

H.C.R. 298, Honoring Ken Boesch.

H.C.R. 294, Commemorating the 50th anniversary of the U.S. Supreme Court's 1939 decision in the case of Coleman v. Miller.

H.C.R. 295, Commemorating the 200th anniversary of the drafting of the Bill of Rights.

H.C.R. 297, Honoring Robert A. Huttash.

H.C.R. 267, In memory of Ronald P. Rossberg, Jr.

H.C.R. 284, In memory of Jerry Allen Rheudasil.

H.C.R. 198, Endorsing the establishment of a national cemetery in the Lake Joe Pool area in Dallas and Tarrant counties.

H.C.R. 158, Encouraging medical, dental, nursing, allied health, social work and mental health professional and provider associations to include information about HIV transmission and prevention and infection control practices.

S.C.R. 107, Designating the week of July 1-7, 1989 and the week of July 1-7, 1990, as Patriotism Week in Texas.

S.C.R. 139, Congratulating Spring High School for their substance abuse prevention and education program.

S.C.R. 163, Congratulating The University of Texas Board of Regents.

S.C.R. 47, In memory of Jack A. Griffin.

S.C.R. 57, Granting the Lorenzo de Zavala Youth Legislative Session permission to use the House and Senate chambers on August 2-4, 1989.

S.C.R. 108, Directing The University of Texas System to conduct through its health science centers a study of long-term effects of prisoner-of-war experience.

S.C.R. 166, Commending Don Rives.

S.C.R. 182, Directing the Department of Health to assure accuracy in reporting the cause of death in a timely manner.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

BILLS AND RESOLUTIONS SIGNED

The President announced the signing in the presence of the Senate, after the captions had been read, the following enrolled bills and resolutions:

H.J.R. 6	H.B. 1519	H.B. 1848	H.B. 2468
H.C.R. 218	H.B. 1563	H.B. 1856	H.B. 2520
H.C.R. 229	H.B. 1564	H.B. 1865	H.B. 2576
H.C.R. 270	H.B. 1601	H.B. 1977	H.B. 2650
H.C.R. 278	H.B. 1603	H.B. 2032	H.B. 2756
H.C.R. 279	H.B. 1637	H.B. 2034	H.B. 2808
H.B. 344	H.B. 1659	H.B. 2191	H.B. 2817
H.B. 421	H.B. 1678	H.B. 2197	H.B. 2979
H.B. 450	H.B. 1741	H.B. 2212	H.B. 2987
H.B. 694	H.B. 1770	H.B. 2294	H.B. 3079
H.B. 1265	H.B. 1838	H.B. 2433	H.B. 3136
			H.B. 3145

COMMITTEE SUBSTITUTE HOUSE BILL 27 ON SECOND READING

On motion of Senator Brooks, on behalf of Senator Washington, and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 27, Relating to the performance of medical tests or procedures to determine human immunodeficiency virus infection, antibodies to human immunodeficiency virus, or infection with any other probable causative agent of acquired immune deficiency syndrome.

The bill was read second time.

Senator Washington offered the following amendment to the bill:

Amend **C.S.H.B. 27** as follows:

(1) In SECTION 1, delete the definitions for "pre-test counseling" and "post-test counseling" and substitute in lieu thereof the following definition and renumber the subdivisions accordingly:

(6) "Counseling" means counseling conducted before or following HIV testing to:

(A) help a person understand ways to reduce the risk of HIV infection, the nature and purpose of an HIV test, the significance of HIV test results, and the potential need for confirmatory testing;

(B) explain and encourage ways to change behavior conducive to HIV transmission; and

(C) encourage the person to seek appropriate medical care and to notify individuals with whom there has been contact capable of transmitting HIV, in the event the person tested is found to have HIV infection.

(2) In SECTION 2(a) delete the phrase "with pre-test counseling or information" and substitute in lieu thereof "with counseling".

(3) In SECTION 2(b) delete "post-test".

(4) In SECTION 2, delete subsection (f) and substitute in lieu thereof the following:

(f) A person performing a test to show HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS is not liable under Subsection (e) of this section for failing to provide counseling as required in Subsection (b) if the person tested does not appear for the counseling after reasonable efforts were made to contact the person tested.

(4) In SECTION 5(a) delete "pre-test and post-test counseling" and substitute in lieu thereof "counseling".

(5) In SECTION 12(d) delete the phrase "within 10 days of the exposure" and substitute in lieu thereof "within 10 days after the exposre".

(6) In SECTION 14(j) delete the phrase "within 10 days of the exposure" and substitute in lieu thereof "within 10 days after the exposure".

The amendment was read and was adopted viva voce vote.

On motion of Senator Brooks and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 27 ON THIRD READING

Senator Brooks, on behalf of Senator Washington, moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 27** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Parker, Parmer, Washington.

The bill was read third time and was passed viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 588 ON SECOND READING

Senator Armbrister moved to suspend the regular order of business to take up for consideration at this time:

C.S.H.B. 588, Relating to proof of certain informal marriages and to spousal maintenance after the dissolution of certain marriages or putative marriages.

The motion prevailed by the following vote: Yeas 18, Nays 5.

Yeas: Armbrister, Barrientos, Brooks, Carriker, Edwards, Glasgow, Haley, Harris, Henderson, Johnson, Krier, Leedom, Ratliff, Sims, Tejeda, Truan, Uribe, Zaffirini.

Nays: Bivins, Dickson, Green, McFarland, Montford.

Absent: Brown, Caperton, Lyon, Santiesteban, Whitmire.

Absent-excused: Parker, Parmer, Washington.

The bill was read second time and was passed to third reading viva voce vote.

(Senator McFarland in Chair)

RECORD OF VOTES

Senators Bivins, Dickson, Montford and Sims asked to be recorded as voting "Nay" on the passage of the bill to third reading.

COMMITTEE SUBSTITUTE HOUSE BILL 588 ON THIRD READING

Senator Armbrister moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 588** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 20, Nays 4.

Yeas: Armbrister, Barrientos, Brooks, Caperton, Carriker, Dickson, Edwards, Glasgow, Haley, Harris, Henderson, Johnson, Krier, Lyon, McFarland, Ratliff, Tejeda, Truan, Uribe, Zaffirini.

Nays: Bivins, Green, Montford, Sims.

Absent: Brown, Leedom, Santiesteban, Whitmire.

Absent-excused: Parker, Parmer, Washington.

The bill was read third time and was passed viva voce vote.

RECORD OF VOTES

Senators Bivins, Dickson, Montford and Sims asked to be recorded as voting "Nay" on the final passage of the bill.

HOUSE BILL 1547 ON SECOND READING

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1547, Relating to the expiration date of licenses to operate crab meat picking or pasteurization plants.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 1547 ON THIRD READING

Senator Armbrister moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 1547** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Parker, Parmer, Washington.

The bill was read third time and was passed viva voce vote.

CONFERENCE COMMITTEE ON HOUSE BILL 2541

Senator Glasgow called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 2541** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on **H.B. 2541** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Glasgow, Chairman; Caperton, Brooks, Edwards and Johnson.

CONFERENCE COMMITTEE ON HOUSE BILL 3183

Senator Ratliff called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 3183** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on **H.B. 3183** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Ratliff, Chairman; Bivins, Sims, Haley and Brown.

SENATE BILL 668 WITH HOUSE AMENDMENT

Senator Caperton called **S.B. 668** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Amendment - Hury

Amend **S.B. 668** by striking all below the enacting clause and substituting the following:

SECTION 1. Section 5, Texas Catastrophe Property Insurance Pool Act (Article 21.49, Insurance Code), is amended by adding Subsections (e) and (f) to read as follows:

(e) Except for an emergency meeting of the Association or the Directors of the Association, the Association shall notify the Board not later than the 11th day before the date of each meeting of the Directors of the Association or a meeting of the members of the Association. Except for closed or executive sessions authorized by Section 2, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), meetings of the Directors and members of the Association shall be open to any member of the Board or its designated representative, a member of the public. Notice of meetings of the Association or Directors of the Association shall be given as provided by Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes).

(f) If an occurrence or series of occurrences within the defined catastrophe area result in insured losses in excess of $100 million in a single calendar year, the Association shall immediately notify the Board of that fact. The Board on receiving notice shall immediately notify the Governor and appropriate committees of each house of the Legislature of the amount of insured losses in excess of $100 million.

SECTION 2. The Texas Catastrophe Property Insurance Pool Act (Article 21.49, Insurance Code) is amended by adding Section 5B to read as follows:

Sec. 5B. EXAMINATION OF ASSOCIATION. (a) The Board shall, once in each two-year period, or more often if the Board considers it necessary, examine the financial condition of the Association and its abilities to meet its liabilities, as well as its compliance with the law of this state affecting the conduct of its business. The examination shall be made by the Board, one or more examiners, or commission of an independent certified public accountant. The Board, or its commissioned examiners, are entitled to free access to all the books and records of the Association or agents writing business in the Association, and may summon and examine under oath officers, employees, agents, and any other persons in the state relative to the affairs of the Association.

(b) A final examination report of the Association resulting from an examination under this section is a public record and available to the public at the Board's offices pursuant to the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

(c) The reasonable and actual expenses of an examination of the Association shall be paid by the Association.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

Senator Caperton moved to concur in the House amendment to **S.B. 668**.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Parker, Parmer, Washington.

COMMITTEE SUBSTITUTE HOUSE BILL 30 ON SECOND READING

On motion of Senator Krier and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 30, Relating to consideration of the income of the spouse of a person obligated to pay child support in the establishment or modification of support and for the application of guidelines and for the establishment, enforcement, and collection of child support including paternity.

The bill was read second time.

Senator Caperton offered the following amendment to the bill:

Amend **C.S.H.B. 30** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Section 11.03, Family Code, is amended by adding Subsection (i) to read as follows:

(i) The attorney general's office may bring any action authorized under Title 2 of this code in providing services authorized by Chapter 76, Human Resources Code. Subject to the provisions of that chapter, the attorney general's office shall have the same right as a party to an original action to seek modification or enforcement of a court order. The attorney general's office is a necessary party to any suit for establishment, modification, or enforcement of support involving a child whose support rights have been assigned to the attorney general pursuant to Chapter 76, Human Resources Code.

SECTION 2. Section 11.06, Family Code, is amended by adding Subsection (l) to read as follows:

(l) Except as provided by Section 14.14 of this code, the fee for filing a transferred case is $35 and is to be paid to the clerk of the court to which the case is transferred. No portion of this fee shall be remitted to the state. The party may not be assessed any other fee, cost, charge, or expense by the clerk of the court or other public official in connection with filing of the transferred case. This fee limitation does not affect a fee payable to the court transferring the case.

SECTION 3. Subsection (h), Section 11.11, Family Code, is amended to read as follows:

(h) The violation of any temporary restraining order, temporary injunction, or other temporary order issued under this section is punishable by contempt. When enforcement of an order is sought by a motion for contempt, the respondent shall be personally served with notice directing the respondent to appear for a hearing at a designated time and place. If the respondent fails to appear for the hearing at the time and place designated, the movant's attorney may request the issuance of

a capias for the arrest of the respondent. If the court grants the request, it shall also set an appearance bond or security in a reasonable amount at the same time that the capias is issued. It shall be rebuttably presumed that an appearance bond or security in the amount of $1,000, or a cash bond in the amount of $250, is reasonable. The capias shall be entered [~~treated~~] by law enforcement officials [~~in the same manner as a misdemeanor arrest warrant for a criminal offense, including entry~~] in a local police, [or] sheriff's, and state computer record of outstanding warrants[~~; but shall not be entered in a state or federal computer record of outstanding warrants~~]. If the respondent is taken into custody and released on bond, the bond shall be conditioned on the respondent's promise to appear in court for a hearing on the merits as required by the court without the necessity of further personal service of notice on the respondent by an officer. If the respondent is taken into custody and not released on bond, the respondent shall be taken before the court that issued the capias on or before the first working day after the arrest for a release hearing to determine whether the respondent's appearance in court at a designated time and place can be assured by a method other than by posting the bond or security previously established. If the court makes this determination, the court may set a hearing on the alleged contempt for a designated time and place without the necessity of further notice to the respondent. If the court is not satisfied that the respondent's appearance in court can be assured and the respondent remains in custody, a hearing on the alleged contempt shall be held as soon as practicable, but not later than five days after the day that the respondent was taken into custody unless the accelerated hearing is waived by the respondent and by the attorney as provided by Section 14.32(f) of this code. If a cash bond has been posted and the respondent appears at the hearing as directed, and if the respondent is found to be in contempt for failure to pay child support as ordered, the court shall order the respondent to execute an assignment of the cash bond to the child support obligee or to a person designated by the court up to the amount of any child support arrearages determined to exist. If the respondent fails to appear at the hearing as directed and the appearance bond or security has been forfeited, and if the respondent has been found to be in contempt for failure to pay child support as ordered, the proceeds of any judgment on the bond or security shall be paid to the obligee or to a person designated by the court up to the amount of any child support arrearages determined to exist. The obligee may bring suit on the bond in his own right.

SECTION 4. Section 11.14, Family Code, is amended by adding Subsection (j) to read as follows:

(j) In any suit seeking the establishment of the parent-child relationship, after a hearing the court shall grant a motion for a preferential setting for a final hearing on the merits filed by a party to the suit or by the attorney or guardian ad litem for the child and shall give precedence to that hearing over other civil cases if discovery has been completed or sufficient time has elapsed since the filing of the suit for the completion of all necessary and reasonable discovery if diligently pursued.

SECTION 5. Section 11.155, Family Code, is amended to read as follows:

Sec. 11.155. CONTENTS OF [~~INCLUSION OF SOCIAL SECURITY NUMBERS IN~~] DECREE. (a) A decree in a suit affecting the parent-child relationship must contain the social security number and driver's license number of each party to the suit, including the child, except that the child's social security number or driver's license number is not required if the child has not been assigned a social security number or driver's license number.

(b) Except as provided by Subsection (c) of this section, a party to a decree in a suit affecting the parent-child relationship that orders child support or possession of or access to a child shall:

(1) when the decree is entered, provide the clerk of court with the party's current residence address, mailing address, home telephone number, name of employer, address of employment, and work telephone number; and

(2) before the 10th day after the date any information in Subdivision (1) of this subsection changes, inform the clerk and all other parties of the change as long as any person, by virtue of the decree, is under an obligation to pay child support or is entitled to possession of or access to a child.

(c) If a court finds after notice and hearing that requiring a party to provide the information required by Subsection (b) of this section is likely to cause the child or a conservator harassment, serious harm, or injury, the court may:

(1) order the information not to be disclosed to another party; or

(2) enter any other order as the interests of justice require.

(d) A decree in a suit affecting the parent-child relationship that orders child support or possession of or access to a child must contain the following language:

"Failure to obey a court order for child support or for possession of or access to a child may result in further litigation to enforce the order, including contempt of court. A finding of contempt may be punished by confinement in jail for up to six months, a fine of up to $500 for each violation, and a money judgment for payment of attorney's fees and court costs.

"Failure of a party to make a child support payment to the place and in the manner required by a court order may result in the party not receiving credit for making the payment.

"Failure of a party to pay child support does not justify denying that party court-ordered possession of or access to a child. Refusal by a party to allow possession of or access to a child does not justify failure to pay court-ordered child support to that party."

(e) Except as provided by Subsection (c), a decree in a suit affecting the parent-child relationship that orders child support or possession of or access to a child must also contain the following language in boldfaced type or in capital letters:

"Each person who is a party to this order or decree is ordered to notify the clerk of this court within 10 days of any change in the party's current residence address, mailing address, home telephone number, name of employer, address of place of employment, and work telephone number. The duty to furnish this information to the clerk of the court continues as long as any person, by virtue of this order or decree, is under an obligation to pay child support or is entitled to possession of or access to a child. Failure to obey the order of this court to provide the clerk with the current mailing address of a party may result in the issuance of a capias for the arrest of the party if that party cannot be personally served with notice of a hearing at an address of record."

(f) The clerk of the court shall maintain a file of any information provided by a party under this section and shall, unless otherwise ordered by the court, provide the information on request, without charge, to a party, the attorney general, a domestic relations office, a child support collection office, or any other person designated to prosecute actions under the Revised Uniform Reciprocal Enforcement of Support Act (Chapter 21 of this code) or to enforce an order providing for child support or possession of or access to a child.

SECTION 6. Subsection (b), Section 12.06, Family Code, is amended to read as follows:

(b) In any suit in which a question of paternity is raised under this section, the court shall conduct the pretrial proceedings and order scientifically accepted paternity testing [~~the blood tests~~] as required in a suit under Chapter 13 of this code.

SECTION 7. Section 13.01, Family Code, is amended to read as follows:

Sec. 13.01. PARTIES: TIME LIMITATION OF SUIT. (a) A suit to establish the parent-child relationship between a child who has no presumed father

[~~is not the legitimate child of a man~~] and the child's biological father [~~by proof of paternity~~] may be brought by the mother, by a man claiming to be or possibly to be the father, or by any other person or governmental entity having standing to sue under Section 11.03 of this code. A suit to establish paternity may be brought before the birth of the child, but must be brought on or before the second anniversary of the day the child becomes an adult, or the suit is barred.

(b) The children to whom this section applies include a child for whom a paternity action was brought but dismissed because a statute of limitations of less than 18 years was in effect.

SECTION 8. Section 13.02, Family Code, is amended to read as follows:

Sec. 13.02. PRETRIAL PROCEEDINGS: [~~BLOOD~~] TESTS. (a) When the respondent appears in a paternity suit, the court shall order the mother, alleged father, and child to submit to the taking of blood, body fluid, or tissue samples for the purpose of scientifically accepted paternity [~~blood~~] testing. The court shall require in its order [~~that the blood testing include a minimum of seven independent genetic systems tested and additional~~] testing [~~as~~] necessary to ascertain the possibility of the alleged father's paternity and shall require that the tests exclude at least 95 percent of the male population [~~be excluded~~] from the possibility of being the father of the child, except that the court shall permit the omission of any further [~~blood~~] testing if [~~blood~~] testing has been conducted sufficient to establish that the alleged father is not the father of the child, or if the costs of [~~the blood~~] testing have reached an amount that the court determines to be the greatest amount that may reasonably be borne by one or more parties to the suit. If the appearance is before the birth of the child, the court shall order the taking of blood, body fluid, or tissue samples to be made as soon as medically practical after the birth.

(b) An order issued under this section is enforceable by contempt, except that:

(1) if the petitioner is the mother or the alleged father and refuses to submit to paternity testing [~~the blood test~~], the court may [~~shall~~] dismiss the suit; or

(2) if any party refuses to submit to court-ordered paternity testing, upon proof sufficient to render a default judgment the court may resolve the question of paternity against that party.

(c) If the respondent is the mother or the alleged father and refuses to submit to the paternity testing [~~blood test~~], the fact of refusal may be introduced as evidence as provided in Section 13.06[~~(d)~~] of this code.

(d) [~~(c)~~] If the respondent fails to appear and wholly defaults or if the allegation of paternity is admitted, paternity testing [~~the blood test~~] shall be waived.

SECTION 9. Section 13.03, Family Code, is amended to read as follows:

Sec. 13.03. PRETRIAL PROCEEDINGS: APPOINTMENT OF EXPERTS. (a) The court may appoint one or more experts qualified in paternity testing to perform the [~~as examiners of blood types to make the blood~~] tests. The court may determine the number and qualifications of the experts and shall prescribe the arrangements for conducting the tests.

(b) The court may order [~~fix~~] a reasonable fee for each court-appointed expert [~~examiner~~] and may require the fee to be paid by any or all of the parties or by the Texas Department of Human Services, if the department is a party of the suit, in the amounts and in the manner directed, or the court may tax all or part or none of the fee as costs in the suit.

(c) A party may employ other experts qualified in paternity testing [~~examiners of blood tests~~]. The court may order blood, body fluid, or tissue samples made available to these experts [~~examiners~~] if requested.

SECTION 10. Section 13.04, Family Code, is amended to read as follows:

Sec. 13.04. PRETRIAL PROCEEDINGS: CONFERENCE. (a) After completion of paternity testing [~~the blood tests~~], the court shall order all parties to appear, either in person or by counsel, at a pretrial conference.

(b) Either party may call a paternity testing expert [~~The court shall call its appointed examiners~~] to testify in person or by deposition about the expert's [~~their~~] tests and findings. [~~A party may call other qualified examiners of blood tests to testify.~~]

(c) A witness at a pretrial conference is governed by the Texas Rules of Civil Evidence.

(d) A verified written report of a paternity testing expert is admissible at the pretrial conference as evidence of the truth of the matters it contains.

(e) [~~(b) Witnesses called by the court are the court's witnesses, and witnesses called by a party are that party's witnesses. The court and the parties may examine and cross-examine all witnesses.~~]

[~~(c)~~] All evidence admitted [~~presented~~] at the pretrial conference is a part of the record of the case.

(f) At the pretrial conference the court may issue a temporary order under Section 11.11 of this code, including an order for the temporary support of the child, if the court finds that:

(1) the respondent is not excluded as the biological father of the child; and

(2) at least 95 percent of the male population is excluded from being the biological father of the child.

SECTION 11. Subsection (b), Section 13.05, Family Code, is amended to read as follows:

(b) If the court finds that the paternity [~~blood~~] tests do not exclude [~~fail to show by clear and convincing evidence~~] the alleged father as [~~is not~~] the father of the child, the court shall set the suit for trial.

SECTION 12. Section 13.06, Family Code, is amended to read as follows:

Sec. 13.06. EVIDENCE AT TRIAL. (a) [~~Unless otherwise permitted by the court on a showing of good cause, a party may call to testify on the results of the blood tests only those experts who testified at the pretrial conference.~~]

[~~(b)~~] A party may call a paternity testing expert to testify at the trial in person or by deposition [~~witness called by a party at the trial is that party's witness~~].

(b) A verified written report of a paternity testing expert is admissible at the trial as evidence of the truth of the matters it contains.

(c) If the paternity [~~blood~~] tests show the possibility of the alleged father's paternity, the court may admit this evidence if offered at the trial. If the paternity [~~blood~~] tests show the possibility of the alleged father's paternity and that at least 95 percent of the male population is excluded from the possibility of being the father, then evidence of these facts constitutes a prima facie showing of the alleged father's paternity, and the party opposing the establishment of the alleged father's paternity has the burden of proving that the alleged father is not the father of the child.

(d) A party who refuses to submit to paternity testing has the burden of proving that the alleged father is not the father of the child

[~~Evidence of a refusal by the respondent to submit to a blood test is admissible to show only that the alleged father is not precluded from being the father of the child~~].

(e) Proof that the respondent signed the birth certificate as the father of the child as provided by Section 14, Chapter 41, Acts of the 40th Legislature, 1st Called Session, 1927 (Rule 47a, Article 4477, Vernon's Texas Civil Statutes), constitutes a prima facie showing of his paternity.

(f) If a copy is provided to the adverse party and to the court at the pretrial conference, submission of a copy of a medical bill for the prenatal and postnatal health care expenses of the mother and child or for charges directly related to the paternity testing constitutes a prima facie showing that the charges are reasonable,

necessary, and customary and may be admitted as evidence of the truth of the matters stated therein.

SECTION 13. Section 13.07, Family Code, is amended to read as follows:

Sec. 13.07. NECESSARY PARTY; REPRESENTATION OF CHILD [~~SETTLEMENT~~]. (a) The child is not a necessary party to a suit under this chapter. It is rebuttably presumed in a trial on the merits before a judge or jury that the interests of the child will be adequately represented by the party bringing suit to establish the paternity of the child. If the court finds that the interests of the child will not be adequately represented by a party to the suit or are adverse to that party, the court shall appoint an attorney ad litem to represent the child.

(b) [~~The child must be a party to a settlement agreement with the alleged father.~~] The child shall be represented in a [~~the~~] settlement agreement, dismissal, or nonsuit by a guardian ad litem or an attorney ad litem appointed by the court, unless the court finds on the record that the interests of the child will be adequately represented by a party to the suit or are not adverse to that party and that the[~~. The~~] court approves the [~~must approve any~~] settlement agreement, dismissal, or nonsuit.

SECTION 14. Section 13.22, Family Code, is amended to read as follows:

Sec. 13.22. STATEMENT OF PATERNITY. (a) The statement of paternity authorized to be used in Section 13.21 of this code must be in writing and signed [~~executed~~] by the father of the child whether or not the father is a minor [~~as an affidavit and witnessed by two credible adults~~].

(b) The statement of paternity [~~affidavit~~] must clearly state that:

(1) the father acknowledges the child as his child;

(2) [~~, that~~] he and the mother, who is named in the statement [~~affidavit~~], were not married to each other at the time of conception of the child or at any subsequent time;[~~;~~] and

(3) [~~that~~] the child is not the biological [~~legitimate~~] child of another man.

(c) The statement may include a waiver of citation in a suit to establish the parent-child relationship but shall not include a waiver of the right to notice of the proceedings. If the respondent does not answer or appear after signing a waiver of service of process, notice of the proceedings shall be given to the respondent by first class mail sent to the address supplied in the waiver. The waiver shall be valid in a suit filed within 12 months of the date of signing.

(d) The statement must be executed before a person authorized to administer oaths under the laws of this state.

(e) The statement may be signed before the birth of the child.

SECTION 15. Section 13.41, Family Code, is amended to read as follows:

Sec. 13.41. VENUE. Venue shall be as provided in Section 11.04 of this code [~~(a) If the alleged father is not the petitioner, venue for a suit under this chapter is in the county where the alleged father resides, except that if the alleged father is not a resident or domiciliary of this state and jurisdiction is to be established as provided by Section 11.051 of this code, venue for the suit is in the county where the mother resides.~~

[~~(b) If the alleged father is the petitioner, venue for the suit is in the county where the mother resides, except that if the mother is not a domiciliary of this state and jurisdiction is to be established as provided by Section 11.051 of this code, venue for the suit is in the county where the child resides~~].

SECTION 16. Section 14.05, Family Code, is amended by amending Subsection (a) and adding Subsections (i) and (j) to read as follows:

(a) The court may order either or both parents to make periodic payments or, for good cause shown, order a lump-sum payment or purchase an annuity, or any combination thereof[~~, or both,~~] for the support of the child until he or she is 18 years of age in the manner and to or for the benefit of the persons specified by the court

in the decree. The court of continuing exclusive jurisdiction may render an original support order, modify an existing order, or render [~~or enter~~] a new order extending child support past the 18th birthday of the child, whether the request for such an order is filed before or after the child's 18th birthday, if the child is fully enrolled in an accredited secondary school in a program leading toward a high school diploma. The order for periodic support may provide that payments continue until the end of the school year in which the child graduates. In addition, the court may order a parent obligated to support a child to set aside property to be administered for the support of the child in the manner and by the persons specified by the court in the decree. In determining the amount of child support, the court shall consider [~~all appropriate factors, including but not limited to~~] the child support guidelines in effect in this state [~~adopted by the supreme court, the needs of the child, the ability of the parents to contribute to the child's support, and any financial resources available for the support of the child~~].

(i) In any suit affecting the parent-child relationship, there is a rebuttable presumption that the amount of periodic child support payments established by the child support guidelines in effect in this state at the time of the hearing are reasonable and that an order of support conforming to those guidelines is in the best interest of the child.

(j) The child support guidelines in effect in this state shall be reviewed at least once every four years by the advisory committee appointed under Subsection (h) of this section.

SECTION 17. Chapter 14, Family Code, is amended by adding Subsection (b) to Section 14.053 to read as follows:

(b) Net Resources Defined. "Net resources," for the purpose of determining child support liability, are 100 percent of all wage and salary income and other compensation for personal services (including commissions, tips, and bonuses), interest, dividends, royalty income, self-employment income (as described in Subsection (c) of this section), net rental income (defined as rent after deducting operating expenses and mortgage payments, but not including noncash items such as depreciation), and all other income actually being received, including but not limited to severance pay, retirement benefits, pensions, trust income, annuities, capital gains, social security benefits, unemployment benefits, disability and workers' compensation benefits, interest income from notes not including return of principal or capital and/or accounts receivable regardless of the source, gifts and prizes, spousal maintenance, and alimony, less (subtracting) 100 percent of social security taxes, federal income tax withholding for a single person claiming one personal exemption and the standard deduction, union dues, and expenses for health insurance coverage for the obligor's child. Benefits paid pursuant to aid for families with dependent children and any other child support received from any source shall be disregarded in calculating net resources.

SECTION 18. Subchapter A, Chapter 14, Family Code, is amended by adding Sections 14.061 and 14.062 to read as follows:

Sec. 14.061. HEALTH INSURANCE. (a) In any suit affecting the parent-child relationship, a court shall order health insurance for the child as provided by this section. The court shall take into consideration the cost and quality of health insurance coverage available to the parties. Priority shall be given to health insurance coverage supplied by an employer of one of the parties.

(b) In determining the manner in which health insurance for the child is to be provided, the court shall consider the following factors:

(1) if health insurance is available for the child at the obligor's place of employment, the court may order the obligor to include the child in the obligor's health insurance; or

(2) if health insurance is not available for the child at the obligor's place of employment but is available for the child at the obligee's place of

employment, the court may order the obligee to provide health insurance for the child and in addition may order the obligor to reimburse the obligee for the actual cost of the health insurance for the child; or

(3) if health insurance is not available for the child at either the obligor's or obligee's place of employment, the court may order the obligor to provide health insurance for the child to the extent that the insurance is available for the child from another source and the obligor is financially able to provide it.

(c) An amount that an obligor is required to pay for health insurance for the child under this section is in addition to the amount that the obligor is required to pay for child support under the guidelines for child support and is a child support obligation and may be enforced as a child support obligation.

Sec. 14.062. REIMBURSEMENT FOR PUBLIC ASSISTANCE. (a) The court may order either or both parents to make periodic payments or a lump-sum payment as child support, or both, as reimbursement for public assistance paid by the state for the support of a child under Chapter 31, Human Resources Code.

(b) Unless the state is a party to an agreement concerning support or purporting to settle past, present, or future support obligations by prepayment or otherwise, an agreement between the parties shall not act to reduce or terminate any right of this state or any other state to recover for public assistance provided, however, that a certificate of assignment or petition for support has been filed with the court by the attorney general.

SECTION 19. Section 14.08, Family Code, is amended by adding Subsection (j) to read as follows:

(j) A court may not modify an order or portion of a decree that provides for the support of a child solely on the basis of the net resources, as defined by Section 14.053(b) of this code, or a change in the income of the spouse of the person obligated to support the child.

SECTION 20. Subsection (a), Section 14.31, Family Code, is amended to read as follows:

[~~(a) Proceeding Commenced By Motion.~~] Enforcement proceedings under this subchapter shall be commenced by the filing of a motion to enforce a final order, judgment, or decree.

SECTION 21. Subchapter B, Chapter 14, Family Code, is amended by adding Section 14.311 to read as follows:

Sec. 14.311. CONTENTS OF MOTIONS GENERALLY. (a) Information. Motions under this subchapter shall, in ordinary and concise language, give the respondent notice of the provisions of the final order, decree, or judgment sought to be enforced, the manner of noncompliance, and the relief sought by the movant.

(b) Child Support Order. If enforcement of a child support order is sought, the motion shall state the amount owed under the terms of the order, the amount paid, and the amount of arrearage. It is not required that the movant plead or prove that the underlying order is enforceable by contempt to obtain other appropriate enforcement remedies.

(c) Payment Record. The movant may attach a copy of a record of child support payments maintained by a state or local child support registry; if so attached, the payment record constitutes a prima facie showing of the facts asserted therein, subject to the right of the respondent to offer controverting evidence, and may be admitted as evidence of the truth of payments made and not made as reflected by the payment record.

(d) Signature. The movant or the movant's attorney shall sign the motion.

(e) Anticipated Violations. If the movant pleads that there have been repeated past violations of the court order, the movant may plead that anticipated future violations of a similar nature may arise between the filing of the motion and the date of the hearing.

(f) Special Exceptions. If a respondent specially excepts to the pleadings or moves to strike, the court shall rule on the exceptions or the motion before it hears the motion to enforce. If an exception is sustained, the court shall give the movant an opportunity to replead and continue the hearing to a designated date and time without the requirement of additional service.

SECTION 22. Subchapter B, Chapter 14, Family Code, is amended by adding Section 14.312 to read as follows:

Sec. 14.312. MOTION FOR CONTEMPT. (a) Child Support. If contempt for failure to pay child support is sought, the motion must allege the portion of the order allegedly violated, that the respondent had the ability to pay all or a portion of the court-ordered support on the dates support was due but was not paid or not timely paid, must specify as to each date of alleged contempt the amount due and the amount paid, if any, and, as applicable, must allege that the respondent has the present ability to comply with the order sought to be enforced.

(b) All Other Motions. If contempt for failure to obey an order relating to possession of or access to a child or for violation of other provisions of a final order, decree, or judgment is sought, the motion must allege the portion of the order allegedly violated, that the respondent had the ability to comply with the court order at the time of the alleged violation, and, as to each violation for which punishment is sought, the date, place, and, if applicable, the time of each occasion upon which the respondent has not complied with the order.

SECTION 23. Subchapter B, Chapter 14, Family Code, is amended by adding Section 14.313 to read as follows:

Sec. 14.313. JOINDER OF CLAIMS AND REMEDIES. (a) Discretionary Joinder. A party seeking enforcement of a final court order under this subchapter may join in the same proceeding, either independently or alternately, as many claims and remedies as he has against another party, whether such claims arise under this chapter, other provisions of this subtitle, or other provisions or rules of law.

(b) Claims. Claims that may be joined include but are not limited to proceedings to:

(1) enforce a child support order by contempt under Section 14.40 of this code;

(2) reduce child support arrearages to judgment under Section 14.41 of this code;

(3) require a person obligated to support a child to furnish bond or other security under Section 14.42 of this code;

(4) require withholding from earnings under Section 14.43 or Subchapter C of this chapter;

(5) enforce a right of possession of or access to a child by contempt under Section 14.50 of this code;

(6) require a person to furnish bond or other security to ensure compliance with a court order for possession of or access to a child under Section 14.51 of this code;

(7) transfer the proceeding because venue is improper under Section 11.06 of this code;

(8) petition for further action concerning a child under Section 11.07 of this code;

(9) modify an existing order or decree under Section 14.08 of this code;

(10) petition for a writ of habeas corpus under Section 14.10 of this code;

(11) recover damages under Chapter 36 of this code;

(12) initiate procedures for withholding child support from earnings without the necessity of further action by the court under Sections 14.44 and 14.45 of this code; and

(13) recover under any reciprocal enforcement of support act or interstate income withholding act whether as rendering or responding state.

SECTION 24. Subchapter B, Chapter 14, Family Code, is amended by adding Section 14.314 to read as follows:

Sec. 14.314. MOTION FOR ENFORCEMENT OF EXISTING COURT ORDER. (a) Setting the Hearing. On the filing of a motion under this subchapter for enforcement of an existing court order with regard to possession of or access to a child or child support, the court shall order the time, place, and date of the hearing at which the respondent shall appear and respond to the motion. It is not necessary for the notice of hearing or show cause order to repeat the matters pleaded or prayed for in the motion for enforcement.

(b) Notice of Hearing, Personal Service. Except as provided by Subsection (c) of this section, notice of a motion seeking enforcement of an existing court order providing for child support, possession of or access to a child shall be personally served on the respondent at least 10 days before the date of a hearing on the motion.

(c) Notice of Hearing, First Class Mail. (1) If a party has been ordered under Section 11.155 of this code to provide the clerk of the court with the party's current mailing address, notice of a motion seeking enforcement of an existing court order providing for child support or for possession of or access to a child may be served by mailing a copy of the notice to the respondent, together with a copy of the motion, by first class mail to the last mailing address of the respondent on file with the clerk of the court. The clerk of the court, movant's attorney, or any person entitled to the address information as provided by Section 11.155 of this code may send the notice. A person who sends the notice shall file of record a certificate of service showing the date of mailing and the name of the person who sent the notice. A party who appears at the hearing at the time and place designated by the first class mail notice and who is present when the case is called makes a general appearance for all purposes in the enforcement proceeding.

(2) The notice shall, in plain and concise language, state the time, date, and place of the hearing and shall state the following: "This notice is a request for you to appear at the designated time, date, and place of the hearing set out in this notice in order to defend yourself against the allegations made against you in the attached or enclosed motion. You are not required to appear at this hearing; however, if you do not appear, a sheriff or constable may and probably will formally serve a court order on you at your place of residence or employment, or wherever you may be found, requiring you to appear at another hearing to defend yourself against the motion. If a sheriff or constable has to serve you, the court may require you to pay for the cost of the service. If you choose to appear at the hearing set out in this notice, then you will have made a formal and legal appearance in court. In this case, no further service of the enclosed motion will have to be made on you. If you do appear at the hearing set out in this notice, you should be aware of the following: (A) you do set out in this notice, you should be aware of the following: (A) you do not have to talk to the party who filed the motion against you or that party's attorney and, if you do talk with them, anything you say may and probably will be used against you; (B) you have the right to be represented by your own attorney; (C) if the motion seeks to have you held in contempt and jailed or fined, the judge may appoint an attorney to represent you if you can prove to the judge that you cannot afford an attorney; and (D) you may have the hearing at the time, date, and place in this notice, or, on your request, the court must set a hearing at a later time of not less than five days in the future; if the judge does set the hearing in the future and you do not appear at that future hearing, the judge may order a

sheriff or constable to arrest you and bring you to court for a hearing on the motion. You are advised to consult with an attorney in order to understand all of your rights before making any decision under this notice."

(d) Failure to Appear After First Class Mail Notice. If a respondent who has been sent notice to appear at a hearing by first class mail does not appear at the designated time, place, and date to respond to a motion seeking enforcement of an existing court order, personal service of notice of a hearing as provided by Subsection (b) of this section shall be attempted.

SECTION 25. Subchapter B, Chapter 14, Family Code, is amended by adding Section 14.315 to read as follows:

Sec. 14.315. MOTION FOR ENFORCEMENT JOINED WITH OTHER CLAIMS OR REMEDIES. (a) Contents. If a motion for enforcement has been joined with other claims, the court shall order the time, place, and date of the hearing at which the respondent shall appear and respond to the motion. It is not necessary for the notice of hearing or show cause order to repeat the matters pleaded or prayed for in the motion for enforcement.

(b) Hearing. The hearing shall be held no sooner than 10 a.m. of the Monday next after the expiration of 20 days from the date of service.

(c) Notice. In a proceeding under this section, the provisions of the Texas Rules of Civil Procedure applicable to the filing of an original lawsuit apply, and each party whose rights, privileges, duties, or powers may be affected by the claim is entitled to receive notice by service of citation commanding the person to appear by filing a written answer.

SECTION 26. Subchapter B, Chapter 14, Family Code, is amended by adding Section 14.316 to read as follows:

Sec. 14.316. NOTICE OF MOTION TO EMPLOYER. An employer who may be directed to withhold income from earnings under Section 14.43 or 14.45 of this code need not be given notice of the proceedings before the issuance of an order or writ for income withholding.

SECTION 27. Subchapter B, Chapter 14, Family Code, is amended by adding Section 14.317 to read as follows:

Sec. 14.317. FAILURE OF RESPONDENT TO APPEAR; CAPIAS. (a) Notice by Personal Service. If a respondent who has been personally served with notice to appear at a hearing at a designated time, place, and date to respond to a motion for enforcement, whether the motion is joined with other claims and remedies or only seeks enforcement of an existing court order, does not appear, the court may upon proper proof grant default judgment for the relief sought and issue a capias for the arrest of the respondent. The court may not adjudicate the respondent in contempt.

(b) Personal Service Unsuccessful After Order to Provide Mailing Address. The court shall issue a capias for the arrest of a party if:

(1) a party is allegedly in arrears in court-ordered child support payments;

(2) a party has been ordered under Section 11.155 of this code to provide the clerk of the court with the party's current mailing address;

(3) did not appear at the hearing; and

(4) subsequently an attempt to serve notice of the hearing by personal service on the party has been unsuccessful despite diligent efforts to serve process at the latest address on file with the clerk and at any other address known to the moving party at which the respondent may be served.

(c) No Notice. The court may not adjudicate the party in contempt in absentia, nor may the court grant a default judgment against a party for any other relief sought in the absence of service of notice of the hearing or an answer or appearance by the party.

(d) Duty of Law Enforcement Officials. The capias shall be treated by law enforcement officials in the same manner as an arrest warrant for a criminal offense, including entry in a local police, sheriff's, or state computer record of outstanding warrants.

(e) Fee for Capias. The fee for a capias issued under this section is the same as the fee for issuance of a writ under Section 51.317, Government Code. The fee for service of a capias issued under this section is the same as the fee for service of a writ in civil cases generally.

SECTION 28. Subchapter B, Chapter 14, Family Code, is amended by adding Section 14.318 to read as follows:

Sec. 14.318. BOND OR SECURITY; RELEASE OF RESPONDENT. (a) Appearance Bond or Security. If the court issues a capias, it shall also set an appearance bond or security in a reasonable amount at the same time that the capias is issued. It shall be rebuttably presumed that an appearance bond or security in the amount of $1,000 or a cash bond in the amount of $250 is reasonable. Evidence that the respondent has attempted to evade service of process, has previously been found guilty of contempt, or has accrued arrearages under a child support obligation over $1,000 is sufficient to rebut the presumption. If the court finds that the presumption is rebutted, the court shall set bond that is reasonable under the circumstances.

(b) Conditional Release. If the respondent is taken into custody and released on bond, the bond shall be conditioned on the respondent's promise to appear in court for a hearing on the merits as required by the court without the necessity of further personal service of notice on the respondent.

(c) Release Hearing. If the respondent is taken into custody and not released on bond, the respondent shall be taken before the court that issued the capias on or before the first working day after the arrest for a release hearing to determine whether the respondent's appearance in court at a designated time and place can be assured by a method other than by posting the bond or security previously established. If the court makes this determination, the court may set a hearing on the alleged contempt for a designated time and place without the necessity of further notice to the respondent. If the court is not satisfied that the respondent's appearance in court can be assured and the respondent remains in custody, a hearing on the alleged contempt shall be held as soon as practicable, but not later than five days after the day that the respondent was taken into custody unless the accelerated hearing is waived by the respondent and by the attorney as provided by Section 14.32(f) of this code.

(d) Cash Bond as Support. If a cash bond has been posted and the respondent appears at the hearing as directed and if the respondent is found to be in contempt for failure to pay child support as ordered, the court shall order the respondent to execute an assignment of the cash bond to the child support obligee or to a person designated by the court up to the amount of any child support arrearages determined to exist.

(e) Appearance Bond or Security as Support. If the respondent fails to appear at the hearing as directed and the appearance bond or security has been forfeited and if the respondent has been found to be in contempt for failure to pay child support as ordered, the proceeds of any judgment on the bond or security shall be paid to the obligee or to a person designated by the court up to the amount of any child support arrearages determined to exist. The obligee may bring suit on the bond.

SECTION 29. Subsection (b), Section 14.32, Family Code, is amended to read as follows:

(b) Court Reporter. An [~~Except when entry of an order is agreed on by the parties, no~~] enforcement order under this subchapter may not [~~shall~~] be entered if

[~~unless~~] a record of the proceedings is not made by a court reporter or as provided by Subchapter A, Chapter 54, Government Code, unless:

(1) the parties agree on entry of the order; or

(2) if the order seeks incarceration, the parties waive the requirement at the time of the hearing either in writing or in open court and with the approval of the court.

SECTION 30. Subsection (a), Section 14.33, Family Code, is amended to read as follows:

(a) Contents. An enforcement order shall contain findings setting out in ordinary and concise language [~~specifically and with particularity or incorporating by reference~~] the provisions of the final order, decree, or judgment for which enforcement was sought, the acts or omissions that are the subject of the order, the manner of noncompliance [~~and the time, date, and place of each and any occasion on which the respondent failed to comply with such provision~~], and [~~setting out~~] the relief awarded by the court. Provided, however, where the order imposes incarceration or a fine, an enforcement order shall contain findings setting out specifically and with particularity or incorporating by reference the provisions of the final order, decree, or judgment for which enforcement was sought and the time, date, and place of each and any occasion on which the respondent failed to comply with such provision and setting out the relief awarded by the court.

SECTION 31. Subsection (b), Section 14.41, Family Code, is amended to read as follows:

(b) Time Limitations. The court may not confirm the amount of child support in arrears and may not enter a judgment for unpaid child support payments that were due and owing more than 10 years before the filing of the motion to render judgment under this section. The court retains jurisdiction to enter judgment for past-due child support obligations if a motion to render judgment for the arrearages is filed within four [~~two~~] years after:

(1) the child becomes an adult; or

(2) the date on which the child support obligation terminates pursuant to the decree or order or by operation of law.

SECTION 32. Section 14.43, Family Code, is amended by amending Subsections (d), (g), (l), and (n) and adding Subsection (r) to read as follows:

(d) Withholding for Arrearages. In addition to income withheld for the current support of a child, in appropriate circumstances and in accordance with the guidelines established for child support payments as provided in Subsection (a) of Section 14.05 of this code, the court shall enter an order that income be withheld from the disposable earnings of the obligor to be applied toward the liquidation of any child support arrearages. The additional amount to be withheld to be applied towards arrears shall be sufficient to fully discharge those arrears in not more than two years or add 20 percent to the amount of the current monthly support order, whichever will result in the arrears being fully discharged in the least amount of time consistent with the limitations on the maximum amount that may be withheld from earnings as provided by Subsection (f) of this section. If current support is no longer owed, the court shall enter an order that income be withheld from the disposable earnings of the obligor to be applied toward the liquidation of any child support arrearages in an amount sufficient to fully discharge those arrears in not more than two years, consistent with the limitations on the maximum amount that may be withheld from earnings as provided by Subsection (f) of this section. If the court finds that such a repayment schedule would cause the obligor, the obligor's family, or children for whom support is due from the obligor to suffer unreasonable hardship, the court may extend the repayment period for a reasonable length of time.

(g) Issuance of Order. On the request of the prosecuting attorney, the attorney general, the obligor, or the obligee, the clerk of the court shall cause a certified copy

of the order withholding income from earnings to be delivered to the obligor's current employer or to any subsequent employer of the obligor. In addition, the clerk shall attach a copy of this section to the order for the information of the employer. The clerk shall issue and mail the certified copy of the order not later than the second working day after the date the order is signed or the request is filed, whichever is later.

(l) Liability and Obligation of Employer for Payments. An employer receiving an order under this section or a writ under Section 14.45 who complies with the order or writ is not liable to the obligor for the amount of income withheld and paid as provided in the order or writ. An employer who received an order or writ of withholding and who does not comply with the order or writ is liable to the obligee for the amount not paid in compliance with the order or writ or to the obligor for the amount withheld and not paid and for reasonable attorney's fees and court costs. An employer receiving two or more orders or writs on any named obligor shall comply with every order or writ to the maximum extent possible. If the total amount in the orders or writ exceeds the maximum amount allowable to be withheld under this section, the employer shall pay an equal amount towards the current support portion of all orders or writs until each order is individually complied with, and thereafter equal amounts on the arrearage portion of all orders until each order or writ is complied with, or until the maximum total amount of allowable withholding under Subsection (f) of this section is reached, whichever occurs first. If an employer is ordered to withhold from more than one obligor, the employer may combine the withheld amounts from the obligors' wages and make a single payment to each appropriate agency requesting withholding if the employer separately identifies the amount of the payment that is attributable to each obligor.

(n) Fine for Employers. In addition to the civil remedies provided by Subsections (l) and (m) of this section or by any other remedy provided by law, an employer who knowingly violates the provisions of those subsections may [~~shall~~] be subject to a fine not to exceed $50 for each occurrence in which the employer fails to withhold. Any fines recovered under this subsection shall be paid to the obligee and credited against any amounts owed by the obligor.

(r) Time Limitations. The court retains jurisdiction to enter an order that provides for income to be withheld from the disposable earnings of the obligor if the motion for income withholding is filed within four years after the date:

(1) the child becomes an adult;

(2) the child support obligation terminates under the decree or order or by operation of law; or

(3) an order withholding income under this section was rendered or a writ of income withholding was issued under Section 14.45 of this code and arrears have not been fully discharged.

SECTION 33. Section 14.44, Family Code, is amended by adding Subsections (g) and (h) to read as follows:

(g) Time Limitations. A notice of delinquency shall be filed not later than four years after the date:

(1) the child becomes an adult; or

(2) the child support obligation terminates under the decree or order or by operation of law; or

(3) an order for income withholding was rendered under Section 14.43 of this code or a writ of income withholding was issued under this section and arrears have not been fully discharged.

(h) Interstate Requests for Income Withholding. In a proceeding initiated under Part D of Title IV of the federal Social Security Act (42 U.S.C. Section 651 et seq.), the registration of a foreign support order pursuant to Chapter 21 of this code shall be a sufficient basis for the filing by the attorney general of a notice of

delinquency under this section. Such notice shall be filed with the clerk of the court having venue under Chapter 21 of this code. Notice of delinquency as provided in this section may be delivered to the obligor at the same time that an order is filed for registration under Chapter 21 of this code.

SECTION 34. Subsection (c), Section 14.45, Family Code, is amended to read as follows:

(c) Withholding for Arrearages. In addition to withholding for current child support, the writ of income withholding shall require an additional amount to be withheld to be applied towards the arrearage sufficient to fully discharge those arrears in not more than two years or add 20 percent of the amount of current monthly support order, whichever will result in the arrears being fully discharged in the least amount of time. If current child support is no longer owed, the writ of income withholding shall require that income be withheld from the disposable earnings of the obligor to be applied toward the liquidation of any child support arrearages in an amount sufficient to fully discharge those arrears in not more than two years, consistent with the limitations on the maximum amount that may be withheld from earnings as provided by Section 14.43(f) of this code. If [~~However,~~ if] the attorney general finds that the obligor, the obligor's family, or the children for whom the support is due would suffer unreasonable hardship from such a schedule of repayment, the attorney general may request an extended repayment schedule to be instituted by the writ.

SECTION 35. Section 14.82, Family Code, is amended by amending Subsections (a), (b), (c), and (f) and adding Subsection (h) to read as follows:

(a) The presiding judge of each administrative judicial region, after conferring with the judges of courts in the region having jurisdiction of Title IV-D cases, shall determine which courts require the appointment of a full-time or part-time master to complete each Title IV-D case within the time specified in Section 14.81 of this code. The presiding judge may limit the appointment to a specified time period and may terminate an appointment at any time. A master appointed under this subchapter may be appointed to serve more than one court. Two or more judges of administrative judicial regions may jointly appoint one or more masters to serve the regions.

(b) If the presiding judge determines that a court requires a master, the presiding judge shall appoint a master. If a master is appointed, the judge of the court shall refer all Title IV-D cases to the master. A master may be appointed to serve more than one court and in more than one administrative judicial region.

(c) The provisions of Subchapter A, Chapter 54, Government Code, relating to the qualifications, powers, and immunity of a master apply to a master appointed under this section, except that a master may reside anywhere within the administrative judicial region in which the court to which the master is appointed is located. If a master is appointed to serve in two or more administrative judicial regions, the master may reside anywhere within the regions.

(f) The master shall take testimony and establish a record in all Title IV-D cases. The record shall be made in accordance with Subchapter A, Chapter 54, Government Code.

(h) If the referring court does not conduct a hearing on the master's report within 60 days after the date the report is filed, either party may file for a writ of mandamus within 10 days seeking to force the court to act. If neither party files for the writ, the master's report is adopted by the referring court by operation of law.

SECTION 36. Subsection (b), Section 21.39, Family Code, is amended to read as follows:

(b) Promptly on registration the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post office address of the obligee. He

shall endorse on the registered support order a file number, the day on which it was filed, and the time of filing, shall sign his name officially thereto, [~~also docket the case~~] and notify the prosecuting attorney of his action. The prosecuting attorney shall proceed diligently to enforce the order.

SECTION 37. Subsection (f), Section 21.002, Government Code, is amended to read as follows:

(f) Section 5, Article 42.03, Code of Criminal Procedure, 1965, and Chapter 14 [~~Section 14.12~~], Family Code, apply when a person is punished by confinement for contempt of court for disobedience of a court order to make periodic payments for the support of a child.

SECTION 38. Subsection (a), Section 24.013, Government Code, is amended to read as follows:

(a) A judge may, in vacation with the consent of the parties to a case:

(1) exercise powers, issue orders, and perform acts as fully as in termtime; and

(2) try any civil case[~~, except divorce cases,~~] without a jury and enter final judgment.

SECTION 39. Subsection (b), Section 54.005, Government Code, is amended to read as follows:

(b) The judge of a court having a master appointed may also refer to the master a trial on the merits over which the master may preside unless one or more parties files a written objection to the master hearing the trial. A party may file an objection at any time prior to trial but not later than the 10th day after the date the party receives notice that the master will hear the trial. If an objection is filed, the trial on the merits shall be heard by the referring court. A trial on the merits is any final adjudication from which an appeal may be taken to a court of appeals.

SECTION 40. Section 54.011, Government Code, is amended to read as follows:

Sec. 54.011. JUDICIAL ACTION ON MASTER'S REPORT. (a) After the master's report is filed, and unless the parties have filed a written notice of appeal to the referring court, the referring court may adopt, approve, or reject the master's report, hear further evidence, or recommit the matter for further proceedings as the referring court considers proper and necessary in the particular circumstances of the case.

(b) If the referring court does not conduct a hearing on the master's report within 60 days after the date the report is filed, either party may file for a writ of mandamus within 10 days seeking to force the court to act. If neither party files for such a writ, the master's report is adopted by the referring court by operation of law.

SECTION 41. Section 54.012, Government Code, is amended by adding Subsection (k) to read as follows:

(k) If the referring court does not conduct a hearing on an appeal within the time provided by Subsection (h) of this section, either party may file for a writ of mandamus within 10 days seeking to force the court to act. If neither party files for such a writ, the appeal of the master's order is overruled by operation of law and the master's report is adopted by the referring court.

SECTION 42. Chapter 32, Human Resources Code, is amended by adding Section 32.040 to read as follows:

Sec. 32.040. IDENTIFICATION OF HUSBAND OR ALLEGED FATHER. (a) A woman receiving medical assistance in the form of prenatal care, child delivery care, and obstetrical care related to prenatal care and child delivery care shall identify her husband, or, if unmarried, shall provide the name and last known address of the alleged father of the unborn child.

(b) If the woman receiving medical assistance is under 18 years of age and resides with one or both parents, the parents shall cooperate in identifying the husband or the alleged father.

(c) The department shall adopt rules to implement the purposes of this section by January 1, 1990.

SECTION 43. Section 76.001, Human Resources Code, is amended to read as follows:

Sec. 76.001. ADMINISTRATION OF STATEWIDE PLAN FOR CHILD SUPPORT. The attorney general's office is the state agency designated to administer a statewide plan for child support to provide child support [~~collection~~], parent locator, and paternity determination services that will enable it and the Texas Department of Human Services to participate in programs established by federal law. In providing services under this chapter the attorney general's office is representing the interest of the state in the general welfare of its citizens and in participating in federal programs and does not represent the interests of any individual.

SECTION 44. Section 76.002, Human Resources Code, is amended by amending Subsections (a), (b), and (c) and adding Subsections (e) and (f) to read as follows:

(a) The attorney general may:

(1) accept, transfer, and expend funds, subject to the General Appropriations Act, made available by the federal or state government or by another public or private source for the purpose of carrying out this chapter;

(2) adopt rules for the provision of child support services;

(3) initiate administrative or legal actions needed to implement this chapter;

(4) enter into contracts or agreements necessary to administer this chapter; [~~and~~]

(5) request agencies of the state and its political subdivisions to search their records to help locate absent parents; and

(6) subject to the requirements of the Family Code, create and implement administrative processes for the establishment and enforcement of child support and medical support obligations, for the establishment of paternity, for cooperating with other states to implement actions under the Uniform Reciprocal Enforcement of Support Act (Chapter 21, Family Code) or any other statute, for the review of child support amounts, and for the resolution or mediation of complaints or disputes relating to child support.

(b) The attorney general may assist in the judicial determination of the paternity of a [~~an illegitimate~~] child who has no presumed father whose support rights have been assigned to the attorney general's office, including the filing of a legal action to establish the parent-child relationship.

(c) The attorney general shall attempt to locate absent parents and is entitled to obtain records and information relating to the location, income, and property holdings of an absent parent from other state and local agencies and public employers. (e) The attorney general may seek modification of support amounts in any suit affecting the parent-child relationship.

(f) The attorney general may take any action with respect to execution and collection of a judgment for child support necessary or proper to satisfy the judgment.

SECTION 45. Section 76.003, Human Resources Code, is amended to read as follows:

Sec. 76.003. ASSIGNMENT OF RIGHT TO SUPPORT. (a) The filing of an application for or the receipt of financial assistance under Chapter 31 of this code or the filing of an application for services under Section 76.004 of this code constitutes an assignment to the attorney general of any rights to support from any other person that the applicant or recipient may have in his own behalf or for a child for whom the applicant or recipient is claiming assistance, including the right to the

amount accrued at the time the application is filed or the assistance is received. However, such assignment shall not change the character of the support obligation, nor does an assignment under Section 76.004 of this code constitute an assignment under Chapter 31 of this code or 45 C.F.R. Section 232.11. An applicant's assignment under this section is valid only if the Texas Department of Human Services or the attorney general approves the application. The attorney general may distribute support payments or parts of payments received by it to the family for whom the payments are made or, if the assignment results from an application for financial assistance under Chapter 31 of this code, may use the payments to provide assistance and services to and on behalf of needy dependent children or as otherwise authorized by law.

(b) Child support payments for the benefit of a recipient child or a child other than a recipient child for whose benefit the attorney general has accepted an application for services as provided in Section 76.004 of this code shall [~~provided service under this chapter may~~] be made payable and transmitted to the attorney general unless a contract between the attorney general and the local payment registry provides otherwise. If a court has ordered support payments to be made to an applicant for or recipient of financial assistance or to a person other than such applicant or recipient, the attorney general may file a certificate [~~notice~~] of the assignment with the court ordering the payments. The certificate [~~notice~~] must include:

(1) a statement that the child is an applicant for or recipient of financial assistance, or a child other than a recipient child for whom services are provided;

(2) the name of the child and the caretaker for whom support has been ordered by the court;

(3) the style and cause number of the case in which support was ordered; [~~and~~]

(4) a directive [~~request~~] that the payments ordered be made payable to and transmitted to the attorney general's office, with instructions for the place of payment and method of processing unless a contract between the attorney general and a local agency provides otherwise; and

(5) a statement that a copy of the certificate and payment instructions have been mailed to the last addresses of the obligor and obligee.

(c) Filing of record of the certificate in the court that rendered the support order shall be sufficient to require that the payments be made in accordance with the instruction in the certificate and that each child support office, district clerk, or other public or private entity processing support payments shall transmit such payments in accordance with the certificate. [~~On receipt of the notice and without a requirement of a hearing, the court shall order that the payments be made to the attorney general's office.~~]

(d) The attorney general's office shall cooperate with the Texas Department of Human Services in determining the distribution and use of child support payments received under this section.

(e) The Texas Department of Human Services shall promptly provide to the attorney general's office the name, case number, grant amount, and other information considered appropriate by the department and the attorney general, for each recipient of financial assistance under Chapter 31 of this code who has ceased receiving the assistance because of the collection of child support.

SECTION 46. Section 76.004, Human Resources Code, is amended to read as follows:

Sec. 76.004. CHILD SUPPORT SERVICES [~~FOR PERSONS NOT RECEIVING ASSISTANCE~~]. (a) The attorney general's office on request or as otherwise authorized by law may provide parent locator, child support [~~collection~~],

or paternity determination services for the benefit of a child without regard to whether the child has received [~~available to a person other than an applicant for or a recipient of~~] financial assistance under Chapter 31 of this code. The office may charge a reasonable application fee and recover costs for the services provided. An application for child support services under this section is an assignment of support rights as provided by Section 76.003 of this code, but shall not constitute an assignment under Chapter 31 of this code or 45 C.F.R. Section 232.11, nor is such assignment a condition of eligibility for services.

(b) The attorney general is authorized to perform the duties and functions contemplated of a state for locating children pursuant to agreements with the federal government entered as provided by 42 U.S.C. Section 663. The attorney general may charge a reasonable application fee not to exceed $25 and recover costs for the services provided. [~~In its administration of the federal Parent Locator Service for the enforcement or determination of child custody in cases of parental kidnapping of a child, the attorney general shall provide parent locator services to a person who presents evidence to the attorney general's office showing that the person is entitled to possession of a child under a court order, but is unable to locate the child because of the taking or retaining of possession of the child or concealment of the whereabouts of the child in violation of the court order. The attorney general may charge a reasonable application fee and recover costs for the services provided.~~]

SECTION 47. Section 76.006, Human Resources Code, is amended to read as follows:

Sec. 76.006. CONFIDENTIALITY OF RECORDS AND PRIVILEGED COMMUNICATIONS.

(a) All files and records of services [~~on recipients of benefits~~] provided under this chapter, including information concerning a custodial parent, noncustodial parent, child, and [~~on~~] an alleged father of a [~~an illegitimate~~] child who has no presumed father, are confidential.

(b) All communications made by a recipient of financial assistance under Chapter 31 of this code or an applicant for services under Section 76.004 of this chapter are privileged. The attorney general may refuse to disclose information provided to the attorney general under this chapter.

(c) Release of information from the files and records shall be restricted to purposes directly connected with the administration of the child support [~~collection~~], paternity determination, parent locator, or aid to families with dependent children programs.

(d) The attorney general by rule may provide for the release of information to public officials.

SECTION 48. Section 76.007, Human Resources Code, is amended to read as follows:

Sec. 76.007. ATTORNEYS REPRESENTING STATE. (a) Attorneys employed by the attorney general may represent the state or other states [~~parties~~] in administrative or legal actions brought under [~~a suit to establish a child support obligation, collect child support, or determine paternity brought under the authority of federal law or~~] this chapter.

(b) The attorney general may contract with private attorneys or political subdivisions of the state to represent parties in legal actions [~~to establish child support obligations, to collect child support, or to determine paternity,~~] brought under the authority of federal law and this chapter.

(c) The attorney general shall provide copies of all contracts entered into under this section to the Legislative Budget Board and the Governor's Office of Budget and Planning, along with a written justification of the need for each contract, within 60 days after the execution of the contract.

(d) Attorneys employed by the attorney general or as otherwise provided under this chapter represent the interests of the state and not the interests of any other

party. The providing of services under this chapter does not create an attorney-client relationship with any other party. The attorney general's office shall at the time of application for child support services inform an applicant that neither the attorney general's office nor any attorney who provides services under this chapter is the attorney for the applicant nor will the office or the attorney provide legal representation for the applicant.

(e) An attorney employed by the attorney general or as otherwise provided under this chapter shall not be appointed or act as a guardian ad litem or attorney ad litem for a child or other party.

(f) The providing of services under this chapter by the attorney general's office shall not authorize service on the attorney general's office of any legal notice required to be served on a party.

SECTION 49. Chapter 76, Human Resources Code, is amended by adding Section 76.009 to read as follows:

Sec. 76.009. AUTHORITY TO PERFORM CHILD SUPPORT REGISTRY FUNCTION. (a) The attorney general's office shall be authorized to engage in the functions of receiving, distributing, or maintaining records of child support payments, whether performed while serving as a court's registry or otherwise.

(b) The attorney general's office shall comply with a request or a subpoena for a record of payments made under this section by providing an official copy of such record. An official copy of a payment record provided under this section shall constitute a prima facie record of payments made through the attorney general's office.

(c) If the attorney general's office determines that a local registry can collect and distribute child support in Title IV-D cases in full compliance with federal law and regulations and with state law, the office shall enter into a contract or agreement with a county for collection and distribution of Title IV-D payments by that local registry. For purposes of this subsection, "local registry" includes any agency or entity which receives records and distributes child support payments, whether supervised by the courts, the court clerk, or any other county or local government official.

SECTION 50. Subsection (a), Section 77.001, Human Resources Code, is amended to read as follows:

(a) The state agency designated to administer a statewide plan for child support may establish and conduct a parent locator service which shall be used to obtain information as to the whereabouts, income, and holdings of any person when such information is to be used for the purposes of locating such person and establishing or enforcing a support or medical support obligation [~~collection~~] against such person.

SECTION 51. Subdivision (2), Subsection (d), Section 1, Article 3.51-6, Insurance Code, is amended to read as follows:

(2) No group policy of accident, health, or accident and health insurance, including group contracts issued by companies subject to Chapter 20, Insurance Code, as amended, shall be delivered in this state unless it contains in substance the following provisions or provisions which in the opinion of the commissioner are more favorable to the persons insured or at least as favorable to the persons insured and more favorable to the policyholder; provided, however, that (A) provisions (v), (xi), and (xiv) shall not apply to policies issued to a creditor to insure debtors of such creditor; (B) provision (xi) shall not apply to Chapter 20 companies; (C) the standard provisions required for individual health insurance policies shall not apply to group health insurance policies; and (D) if any provision of this section is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy, the insurer, with the approval of the

commissioner, shall omit from such policy an inapplicable provision or part of a provision and shall modify an inconsistent provision in such manner as to make the provision as contained in the policy consistent with the coverage provided by the policy:

(i) a provision that premiums due under the policy shall be remitted on or before the due date by the premium payors as designated in the policy and within such period of grace as may be specified therein;

(ii) a provision that the validity of the policy shall not be contested except for nonpayment of premiums after it has been in force for two years from its date of issue and that in the absence of fraud no statement made by any person covered by the policy relating to his or her insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of two years during such person's lifetime nor unless it is contained in a written instrument signed by him or her; provided, however, that no such provision shall preclude the assertion at any time of defenses based upon: (aa) provisions in the policy which relate to eligibility for coverage; (bb) provisions in group accident and health insurance or disability insurance policies which relate to overinsurance; (cc) provisions of disability policies which relate to the relation of earnings to insurance; or (dd) other similar provisions in such policies that limit the amounts of recovery from all sources to no more than 100 percent of the total actual losses or expenses incurred;

(iii) a provision that the policy and any application attached shall constitute the entire contract between the parties and that in the absence of fraud all statements made by the policyholder or person insured shall be deemed representations and not warranties, and that no such statement shall be used in any contest under the policy, unless a copy of the written instrument containing the statement is or has been furnished to such person or in the event of death or incapacity of the insured person to the individual's beneficiary or personal representative;

(iv) a provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of the coverage;

(v) a provision specifying the additional exclusions or limitations, if any, applicable under the policy with respect to a disease or physical condition of a person, not otherwise excluded from the person's coverage by name or specific description effective on the date of the person's loss, which existed prior to the effective date of the person's coverage under the policy. Any such exclusion or limitation may only apply to a disease or physical condition for which medical advice or treatment was received by the person during the 12 months prior to the effective date of the person's coverage. In no event shall such exclusion or limitation apply to loss incurred or disability commencing after the earlier of: (aa) the end of a continuous period of 12 months commencing on or after the effective date of the person's coverage during all of which the person has received no medical advice or treatment in connection with such disease or physical condition; and (bb) the end of the two-year period commencing on the effective date of the person's coverage;

(vi) if the premiums or benefits vary by age, a provision specifying an equitable adjustment of premiums or of benefits, or both, to be made in the event the age of a covered person has been misstated, such provision to contain a clear statement of the method of adjustment to be used;

(vii) a provision that written notice of claim must be given to the insurer within 20 days after the occurrence or commencement of any loss covered by the policy. Failure to give notice within such time shall not

invalidate or reduce any claim if it shall be shown not to have been reasonably possible to give such notice and that notice was given as soon as was reasonably possible;

(viii) a provision that the insurer will furnish to the person making claim or to the policy holder for delivery to such person such forms as are usually furnished by it for filing proof of loss. If such forms are not furnished before the expiration of 15 days after the insurer received notice of any claim under the policy, the person making such claim shall be deemed to have complied with the requirements of the policy as to proof of loss upon submitting within the time fixed in the policy for filing proof of loss, written proof covering the occurrence, character, and extent of the loss for which claim is made.

(ix) a provision that in the case of claim for loss of time for disability, written proof of such loss must be furnished to the insurer within the 90 days after the commencement of the period for which the insurer is liable, that subsequent written proofs of the continuance of such disability must be furnished to the insurer at such intervals as the insurer may reasonably require, and that in the case of claim for any other loss written proof of such loss must be furnished to the insurer within 90 days after the date of such loss. Failure to furnish such proof within such time shall not invalidate or reduce any claim if it was not reasonably possible to furnish such proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity of the claimant, later than one year from the time proof is otherwise required;

(x) a provision that all benefits payable under the policy other than benefits for loss of time shall be payable not more than 60 days after receipt of proof, that, subject to due proof of loss, all accrued benefits payable under the policy for loss of time shall be paid not less frequently than monthly during the continuance of the period for which the insurer is liable, and that any balance remaining unpaid at the termination of such period shall be paid as soon as possible after receipt of such proof;

(xi) a provision that benefits for loss of life of the person insured shall be payable to the beneficiary designated by the person insured or the assignee. However, if the policy contains conditions pertaining to family status the beneficiary may be the family member specified by the policy terms. In either case, payment of these benefits is subject to the provisions of the policy. In the event no such designated or specified beneficiary is living at the death of the person insured, the benefits shall be payable to the estate of the insured. All other benefits of the policy shall be payable to the person insured or the assignee. The policy may also provide that if any benefit is payable to the estate of a person or to a person who is a minor or otherwise not competent to give a valid release, the insurer may pay such benefit, up to an amount established by the board, to any relative by blood or connection by marriage of such person who is deemed by the insurer to be equitably entitled thereto;

(xii) a provision that the insurer shall have the right and opportunity to examine the person of the individual for whom claim is made when and so often as it may reasonably require during the pendency of claim under the policy and also the right and opportunity to make an autopsy in case of death where it is not prohibited by law;

(xiii) a provision that no action at law or in equity shall be brought to recover on the policy prior to the expiration of 60 days after proof of loss has been filed in accordance with the requirements of the policy and that no such action shall be brought at all unless brought within three years from the expiration of the time within which proof of loss is required by the policy;

(xiv) a provision describing the conversion or extension of coverage option elected by the insurer in accordance with Subdivision (3) of Subsection (d) of this section; and

(xv) a provision that, in determining the dependents or the beneficiaries of an insured, or both, prohibits a distinction on the basis of the marital status or the lack thereof between the insured and the other parent.

SECTION 52. Chapter 3, Insurance Code, is amended by adding Article 3.51-13 to read as follows:

Art. 3.51-13. BENEFIT PAYMENTS TO PARENT OF A MINOR CHILD

Sec. 1. An insurer or group hospital service company that delivers, issues for delivery, or renews a group accident and sickness insurance policy in this state, including a policy issued by a company subject to Chapter 20 of this code, that provides coverage for a minor child who otherwise qualifies as a dependent of a person who is a member of the group may pay benefits on behalf of the child to the person who is not a member of the group if a court order providing for the managing conservator of the child has been issued by a court of competent jurisdiction in this or any other state.

Sec. 2. A group accident and sickness insurance policy issued by an insurer or group hospital service company may be required to pay benefits pursuant to the terms of the policy and as provided by this article on compliance by the person who is not a member of the group with the requirements of this article, claim application procedures of the insurer or company, and rules of the State Board of Insurance. However, any requirements imposed on the managing conservator of the child shall not apply in the case of any unpaid medical bill for which a valid assignment of benefits has been exercised in accordance with policy provisions or otherwise, nor to claims submitted by the group member where the group member has paid any portion of a medical bill that would be covered under the terms of the policy.

Sec. 3. Before a person who is not a member of a group is entitled to be paid benefits under Section 1 of this article, the person must submit to the insurer or company with the claim application written notice that the person:

(1) is the managing conservator of the child on whose behalf the claim is made; and

(2) submit a certified copy of a court order establishing the person as managing conservator or other evidence designated by rule of the State Board of Insurance that the person qualifies to be paid the benefits as provided by this article.

Sec. 4. The State Board of Insurance may adopt rules to assure the effective implementation of this article.

SECTION 53. Subsection (a), Section 14, Chapter 41, Acts of the 40th Legislature, 1st Called Session, 1927 (Rule 47a, Article 4477, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The standard certificate of birth shall be in such form and shall provide for such items of information as may be prescribed by the Texas Department of Health. The form must include a space for recording the social security numbers of the mother and father and the signature of the biological mother and biological father. Such social security numbers and signatures shall not be considered a part of the legal certificate of birth, shall be made available to the agency administering the state's plan under Part D of Title IV of the federal Social Security Act (42 U.S.C. Section 651 et seq.), and shall not be used or disseminated for any purpose other than the establishment and the enforcement of child support orders. The father of a [~~an illegitimate~~] child who has no presumed father may acknowledge paternity by signing the certificate of birth or in accordance with [~~executing an affidavit acknowledging paternity according to~~] the requirements of Section 13.22, Family Code. [~~The affidavit may be filed with the Texas Department of Health. If so filed, the affidavit shall be maintained with the original birth record, but shall not become~~

~~a part thereof. Once filed, such affidavit becomes privileged, and shall be available only to a court of competent jurisdiction, in which a suit of paternity respecting the subject of the affidavit is pending, on motion of the trial judge.~~] Any person may apply to the Texas Department of Health to have any indication of the absence of paternity of a child who has no presumed father [~~illegitimacy~~] removed from his or her birth record[~~, including separate medical records and the paternity affidavit~~]. The Department shall charge a fee of $10.00 for this service. All items prescribed on the certificate of birth are hereby declared necessary for the legal, social and sanitary purposes subserved by registration records. The items on the birth, death, or fetal death certificate of a child relating to the father of the child shall be completed to show the name and other related information about the father only if:

(1) the mother of the child was married to the father at the time of conception or birth of the child or at some point after birth; [~~or~~]

(2) [~~if~~] the paternity of the child was established by a decree issued by a court of competent jurisdiction; or

(3) the father signed the certificate of birth or otherwise consented in writing, on a form prescribed by the department, to be named as the father of the child on the certificate of birth. The Texas Department of Health shall be specifically authorized to use and to provide upon request to other state agencies records pertaining to all births in connection with programs to notify the mothers of young children about health needs for the children.

SECTION 54. The following laws are repealed:

(1) Subsections (b), (c), (d), and (e), Section 14.31, Family Code; and

(2) Chapter 46, Human Resources Code.

SECTION 55. Subdivisions (3), (4), (8), (9), (10), and (11), Section 11.01, Family Code, are amended to read as follows:

(3) "Parent" means the mother, a man presumed to be the biological father [~~as to whom the child is legitimate~~] or a man who has been adjudicated to be the biological father by a court of competent jurisdiction, or an adoptive mother or father, but does not include a parent as to whom the parent-child relationship has been terminated.

(4) "Parent-child relationship" means the legal relationship between a child and the child's biological or adoptive parents incident to which the rights, privileges, duties, and powers [~~existing between a parent and child~~] as provided by Section 12.04 of this code are conferred or imposed. It includes the mother and child relationship and the father and child relationship.

(8) [~~"Illegitimate child" means a child:~~

[~~(i) who is not and has never been the legitimate child of a man;~~

[~~(ii) who is the biological child of a man whose paternity has not been adjudicated by a court of competent jurisdiction; and~~

[~~(iii) whose parent-child relationship with its biological mother and biological father has not been terminated by a court decree.~~

[~~(9)~~] "Governmental entity" means the state, a political subdivision of the state, or an agency of the state.

(9) [~~(10)~~] "Obligor" means any person required to make payments under the terms of a support order for a child.

(10) [~~(11)~~] "Obligee" means any person or entity entitled to receive payments under an order of child support and shall include an agency of this state or of another jurisdiction to which a person has assigned his or her right to support.

SECTION 56. Subsection (a), Section 11.03, Family Code, is amended to read as follows:

(a) An original suit affecting the parent-child relationship may be brought at any time by:

(1) a parent of the child;

(2) the child (through a representative authorized by the court);

(3) a custodian or person having rights of visitation with or access to the child appointed by an order of a court of another state or country or by a court of this state before January 1, 1974;

(4) a guardian of the person or of the estate of the child;

(5) a governmental entity;

(6) any authorized agency;

(7) a man alleging himself to be the biological father of a child who has no presumed father [~~the alleged or probable father of an illegitimate child~~] filing in accordance with Chapter 13 of this code, but not otherwise;

(8) a person who has had actual possession and control of the child for at least six months immediately preceding the filing of the petition; or

(9) a person designated as the managing conservator in a revoked or unrevoked affidavit of relinquishment under Section 15.03 of this code or to whom consent to adoption has been given in writing under Section 16.05 of this code.

SECTION 57. Subdivision (1), Subsection (d), Section 11.05, Family Code, is amended to read as follows:

(1) In a suit in which a determination of paternity is sought, except as provided in paragraph (2), the jurisdiction of the court terminates when an order dismissing with prejudice a suit under Chapter 13 becomes final, or when an order under Subsection (b), Section 13.08, declaring that the alleged father is not the father of the child becomes final, or when an order denying voluntary paternity [~~legitimation~~] under Section 13.21 becomes final.

SECTION 58. Subsection (b), Section 11.09, Family Code, is amended to read as follows:

(b) Service of citation may be given to any other person who has or who may assert an interest in the child and may be given to the unknown father of a [~~an illegitimate~~] child who has no presumed father.

SECTION 59. Section 12.01, Family Code, is amended to read as follows:

Sec. 12.01. RELATION OF CHILD TO MOTHER AND FATHER. (a) The parent-child relationship may be established between a child and:

(1) the biological mother by proof of her having given birth to the child;

(2) the biological father as provided by this code; and

(3) an adoptive parent by proof of adoption.

(b) The parent-child relationship extends equally to every child and parent regardless of the marital status of the parents. [~~A child is the legitimate child of his mother.~~]

SECTION 60. Section 12.02, Family Code, is amended to read as follows:

Sec. 12.02. PRESUMPTION OF PATERNITY. (a) A man is presumed to be the biological father of a child if:

(1) he and the child's biological mother are or have been married to each other and the child is born during the marriage or not more than 300 days after the date the marriage terminated by death, annulment, divorce, or by having been declared void;

(2) before the child's birth, he and the child's biological mother attempted to marry each other by a marriage in apparent compliance with law, although the attempted marriage is or could be declared void, and the child is born during the attempted marriage or not more than 300 days after the date the attempted marriage terminated by death, annulment, divorce, or by having been declared void;

(3) after the child's birth, he and the child's biological mother have married or attempted to marry each other by a marriage in apparent compliance with law, although the attempted marriage is or could be declared void or voided by annulment, and:

(A) he has filed a written acknowledgment of his paternity of the child under Chapter 13 of this code;

(B) he consents in writing to be named and is named as the child's father on the child's birth certificate; or

(C) he is obligated to support the child under a written voluntary promise or by court order;

(4) without attempting to marry the mother, he consents in writing to be named as the child's father on the child's birth certificate; or

(5) before the child reaches the age of majority, he receives the child into his home and openly holds out the child as his biological child.

(b) A presumption under this section may be rebutted only by clear and convincing evidence. If two or more presumptions arise that conflict, the presumption that is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man. [~~RELATION OF CHILD TO FATHER. (a) A child is the legitimate child of his biological father if the child is born or conceived before the marriage of his biological father and mother. A child is rebuttably presumed to be the legitimate child of a man if the child is born during the marriage of or within the period of gestation following the dissolution of the marriage of the man and the mother of the child.~~

[~~(b) A child is the legitimate child of his biological father if at any time his mother and biological father have attempted to marry in apparent compliance with the laws of this state or another state or nation, although the attempted marriage is or might be declared void, and the child is born or conceived before or during the attempted marriage.~~

[~~(c) A child is the legitimate child of a man if the man's paternity is established under the provisions of Chapter 13 of this code.~~]

SECTION 61. Subsection (a), Section 12.03, Family Code, is amended to read as follows:

(a) If a husband consents to the artificial insemination of his wife, any resulting child is the [~~legitimate~~] child of both of them. The consent must be in writing and must be acknowledged.

SECTION 62. Subsection (c), Section 12.06, Family Code, is amended to read as follows:

(c) In any suit in which a question of paternity is raised under this section, the husband or wife who is denying the husband's paternity of the child has the burden of rebutting the presumption of paternity as provided in this code [~~legitimacy~~]. An order for temporary child support, conservatorship, or other relief entered under Section 11.11 of this code is valid and enforceable unless superseded by a final decree finding nonpaternity of the husband.

SECTION 63. The heading of Subchapter B, Chapter 13, Family Code, is amended to read as follows:

SUBCHAPTER B. VOLUNTARY PATERNITY [~~LEGITIMATION~~]

SECTION 64. Section 13.21, Family Code, is amended to read as follows:

Sec. 13.21. VOLUNTARY PATERNITY [~~LEGITIMATION~~]. (a) If a statement of paternity has been executed by a man claiming to be the biological father of a child who has no presumed father [~~an illegitimate child~~], he, [~~or~~] the mother of the child, the child through a representative authorized by the court, or any other person or a governmental entity having standing to sue under Section 11.03 of this code [~~or the Texas Department of Human Services~~] may file a petition

for a decree adjudicating him as a parent of the child. [~~The statement of paternity must be attached to the petition.~~]

(b) The court shall enter a decree adjudicating the child to be the biological [~~legitimate~~] child of its father and the father to be a parent of the child if the court finds that the statement of paternity was executed as provided in this chapter, and the facts stated therein are true.

(c) If the paternity of the child is uncertain or is disputed by any party in a suit filed under this subchapter, the provisions of Sections 13.02 through 13.07 of this code shall apply.

(d) A suit for voluntary paternity [~~legitimation~~] may be joined with a suit for termination under Chapter 15 of this code.

(e) A suit under this section may be instituted at any time.

SECTION 65. Section 13.43, Family Code, is amended to read as follows:

Sec. 13.43. BIRTH CERTIFICATE. On a determination of paternity, the clerk of the court, unless directed otherwise by the court, shall transmit a copy of the decree to the State Registrar of Vital Statistics. The decree shall state the name of the child. The registrar shall substitute for the original a new birth certificate based on the decree in accordance with the provisions of the laws which permit the correction or substitution of birth certificates for adopted children or children presumed to be the biological children [~~legitimated~~] by the subsequent marriage of their parents and in accordance with the rules and regulations promulgated by the State Department of Health. The new certificate may not show that the father and child relationship was established after the child's birth but may show the actual place and date of birth.

SECTION 66. Subsection (a), Section 15.021, Family Code, is amended to read as follows:

(a) A petition in a suit affecting the parent-child relationship which requests the termination of the parent-child relationship with respect to either or both parents or which requests involuntary termination of the rights of an alleged or probable father of a [~~an illegitimate~~] child may be filed before the birth of the child.

SECTION 67. Section 15.023, Family Code, is amended to read as follows:

Sec. 15.023. INVOLUNTARY TERMINATION OF THE RIGHTS OF AN ALLEGED OR PROBABLE FATHER. The procedural and substantive standards for termination of parental rights under Title 2 of this code shall apply to the termination of the rights of an alleged or probable father with respect to a [~~an illegitimate~~] child who has no presumed father. In addition, the rights of an alleged or probable father with respect to a [~~an illegitimate~~] child who has no presumed father may also be terminated if, after being served with citation in a suit affecting the parent-child relationship, the alleged or probable father does not respond by timely filing an admission of paternity or by filing a counterclaim for paternity or for voluntary paternity [~~legitimation~~] to be adjudicated under Chapter 13 of this code prior to the final hearing in the suit.

SECTION 68. Subsection (b), Section 15.03, Family Code, is amended to read as follows:

(b) The affidavit must contain:

(1) the name, address, and age of the parent whose parental rights are being relinquished;

(2) the name, age, and birthdate of the child;

(3) the names and addresses of the guardians of the person and estate of the child, if any;

(4) a statement that the affiant is or is not presently obligated by court order to make payments for the support of the child;

(5) a full description and statement of value of all property owned or possessed by the child;

(6) allegations that termination of the parent-child relationship is in the best interest of the child;

(7) one of the following, as applicable:

(A) the name and address of the other parent;

(B) a statement that the parental rights of the other parent have been terminated by death or court order; or

(C) a statement that the child has no presumed father [~~is not the legitimate child of the father~~] and that an affidavit of status of child has been executed as provided by Section 15.04 of this code;

(8) a statement that the parent has been informed of his parental rights, powers, duties, and privileges; and

(9) a statement that the relinquishment is revocable, or that the relinquishment is irrevocable, or that the relinquishment is irrevocable for a stated period of time.

SECTION 69. Subsection (a), Section 15.04, Family Code, is amended to read as follows:

(a) If the child has no presumed father [~~is not the legitimate child of the father~~], an affidavit shall be executed by the mother, whether or not a minor, witnessed by two credible persons, and verified before any person authorized to take oaths.

SECTION 70. Subsection (e), Section 15.041, Family Code, is amended to read as follows:

(e) In a suit to adopt a child or in a suit brought by the Texas Department of Human Services or an authorized agency for the purpose of terminating all legal relationships and rights which exist or may exist between the child's parents and the child, the court may render a decree terminating all legal relationships and rights which exist or may exist between a child and a man who has executed an affidavit of waiver of interest in the child, including the right to seek voluntary paternity [~~legitimation~~] of the child, if the court finds that rendition of the decree is in the best interest of the child.

SECTION 71. Subdivision (3), Subsection (b), Section 71.01, Family Code, is amended to read as follows:

(3) "Family" includes individuals related by consanguinity or affinity, individuals who are former spouses of each other, individuals who are the biological parents of the same child, without regard to marriage [~~or legitimacy~~], and a foster child and foster parent, whether or not those individuals reside together.

SECTION 72. Subsection (a), Section 41.001, Human Resources Code, is amended to read as follows:

(a) The department shall promote the enforcement of all laws for the protection of [~~illegitimate,~~] dependent, neglected, and delinquent children and children who have no presumed father[~~;~~] and shall take the initiative in all matters involving the interests of these children where adequate provision for them has not already been made.

SECTION 73. Subsection (a), Section 49.015, Human Resources Code, is amended to read as follows:

(a) If the administrator determines that an adoptee and either of the adoptee's birth parents have registered, disclosures may be made without the registration of the other birth parent only if:

(1) the birth parent who did not register, after having been served with citation in person, by publication, or by other substituted service, defaulted in the suit in which the parent-child relationship between the birth parent and the adoptee was terminated or declared not to exist;

(2) the adoptee and birth mother of the adoptee have registered, and each putative father of the adoptee has either died without establishing his paternity [~~legitimating the adoptee~~] or failed to establish his paternity [~~legitimate the adoptee~~]

after being served with citation in person, by publication, or by substituted service in any suit affecting the parent-child relationship with respect to the adoptee;

(3) the adoptee and the birth mother of the adoptee have registered, and there is no man who is a birth parent of the adoptee;

(4) the birth mother submits, or the administrator obtains from a court of competent jurisdiction in the state where the adoptee's original birth certificate is filed, a copy of a judgment declaring that the identity of the adoptee's biological father is unknown; or

(5) the administrator verifies that no living man was identified and given notice in preadoption legal proceedings of his status as the adoptee's biological father and that before January 1, 1974, either the parent-child relationship between the adoptee and the adoptee's birth mother was terminated or the adoptee was adopted.

SECTION 74. Subsection (b), Section 3, Texas Probate Code, is amended to read as follows:

(b) "Child" includes an adopted child, whether adopted by any existing or former statutory procedure or by acts of estoppel, but, unless expressly so stated herein, does not include a [~~an unrecognized, illegitimate~~] child who has no presumed [~~of the~~] father.

SECTION 75. Section 40, Texas Probate Code, is amended to read as follows:

Sec. 40. INHERITANCE BY AND FROM AN ADOPTED CHILD. For purposes of inheritance under the laws of descent and distribution, an adopted child shall be regarded as the child of the parent or parents by adoption, such adopted child and its descendants inheriting from and through the parent or parents by adoption and their kin the same as if such child were the natural [~~legitimate~~] child of such parent or parents by adoption, and such parent or parents by adoption and their kin inheriting from and through such adopted child the same as if such child were the natural [~~legitimate~~] child of such parent or parents by adoption. The natural parent or parents of such child and their kin shall not inherit from or through said child, but said child shall inherit from and through its natural parent or parents. Nothing herein shall prevent any parent by adoption from disposing of his property by will according to law. The presence of this Section specifically relating to the rights of adopted children shall in no way diminish the rights of such children, under the laws of descent and distribution or otherwise, which they acquire by virtue of their inclusion in the definition of "child" which is contained in this Code.

SECTION 76. Section 42, Texas Probate Code, is amended to read as follows:

Sec. 42. INHERITANCE RIGHTS OF [~~LEGITIMATED~~] CHILDREN. (a) Maternal Inheritance. For the purpose of inheritance, a child is the [~~legitimate~~] child of his biological or adopted mother, so that he and his issue shall inherit from his mother and from his maternal kindred, both descendants, ascendants, and collaterals in all degrees, and they may inherit from him and his issue.

(b) Paternal Inheritance. For the purpose of inheritance, a child is the [~~legitimate~~] child of his biological father if the child is born under circumstances described by Section 12.02, Family Code, is adjudicated to be the child of the father by court decree as provided by Chapter 13, Family Code, was adopted by his father [~~or conceived before or during the marriage of his father and mother or is legitimated by a court decree as provided by Chapter 13 of the Family Code~~], or if the father executed a statement of paternity as provided by Section 13.22, [~~of the~~] Family Code, or a like statement properly executed in another jurisdiction, so that he and his issue shall inherit from his father and from his paternal kindred, both descendants, ascendants, and collaterals in all degrees, and they may inherit from him and his issue. A person claiming to be a biological [~~an illegitimate~~] child of the decedent, who is not otherwise presumed to be a child of the decedent, or claiming

inheritance through a biological [~~an illegitimate~~] child of the decedent, who is not otherwise presumed to be a child of the decedent, may petition the probate court for a determination of right of inheritance. If the court finds by clear and convincing evidence that the purported father was the biological father of the child, the child is treated as any other child of the decedent [~~legitimate~~] for the purpose of inheritance and he and his issue may inherit from his paternal kindred, both descendants, ascendants, and collaterals in all degrees, and they may inherit from him and his issue. This section does not permit inheritance by a purported father of a [~~an illegitimate~~] child, whether recognized or not, if the purported father's parental rights have been terminated.

(c) Homestead Rights, Exempt Property, and Family Allowances. A [~~legitimate~~] child as provided by Subsections (a) and (b) of this section is a [~~legitimate~~] child of his mother, and a [~~legitimate~~] child of his father, for the purpose of determining homestead rights, distribution of exempt property, and the making of family allowances.

(d) Marriages Void and Voidable [~~Null in Law~~]. The issue [~~also~~] of marriages declared void or voided by annulment [~~deemed null in law~~] shall be treated in the same manner as issue of valid marriages [~~nevertheless be legitimate~~].

SECTION 77. Subsection (i), Section 11, Chapter 183, Acts of the 64th Legislature, 1975 (Article 6243e.1, Vernon's Texas Civil Statutes), is amended to read as follows:

(i) The board of trustees shall determine all questions of dependency, and their determination shall be final and conclusive on all parties. All unmarried[~~; legitimate, and legally adopted~~] children under age 22, in the absence of a determination to the contrary, are considered dependent.

SECTION 78. Section 14.14, Family Code, is amended to read as follows:

Sec. 14.14. EXEMPTION FROM COURT FEES: ATTORNEY GENERAL. A clerk, auditor, sheriff, or other government officer or employee may not collect fees [~~charge a fee~~] or other amount for services rendered in connection with an action or proceeding in which the attorney general of this state is representing a party for the purpose of obtaining child support payments at the time the service or filing is done. However, the court shall assess this cost against the nonprevailing party at the conclusion of the proceeding, except that the court may not assess cost against the attorney general nor any party represented by the attorney general.

SECTION 79. Subsection (b), Section 14.05, Family Code, is amended to read as follows:

(b) The court may order either or both parents to provide for the support of a minor or adult disabled child for an indefinite period under Section 14.051 of this code. [~~If the court finds that the child, whether institutionalized or not, requires continuous care and personal supervision because of a mental or physical disability and will not be able to support himself, the court may order that payments for the support of the child shall be continued after the 18th birthday and extended for an indefinite period. The court may enter an order under this subsection only if a request for an order of extended support under this subsection has been made in the original suit, a petition requesting further action under Section 11.07 of this code, or a motion to modify under Section 14.08 of this code filed before the child's 18th birthday.~~]

SECTION 80. Chapter 14, Family Code, is amended by adding Section 14.051 to read as follows:

Sec. 14.051. SUPPORT FOR A MINOR OR ADULT DISABLED CHILD. (a) In this section:

(1) "Adult child" means a child that is 18 years of age or older.

(2) "Child" means a son or daughter of any age.

(b) The court may order either or both parents to provide for the support of a child for an indefinite period and determine the rights, privileges, duties, and powers of the child's parents for the support of the child if the court finds that:

(1) the child, whether institutionalized or not, requires substantial care and personal supervision because of a mental or physical disability and will not be able to support himself; and

(2) the disability exists, or the cause of the disability is known to exist, before or on the 18th birthday of the child.

(c) An action under this section may be brought and maintained only by a parent of the child. The parent may not transfer or assign the right to bring or maintain an action under this section to any person, including a governmental or private entity or agency, except for an assignment made under Part D of Title IV of the federal Social Security Act, as amended (42 U.S.C. Section 651 et seq.).

(d) An action under this section may be brought regardless of the age of the child.

(e) An action under this section may be brought as an independent cause of action or as an action joined with any other action brought under this code.

(f) If no court has continuing jurisdiction over the child, an action under this section may be brought as an original suit affecting the parent-child relationship. If there is a court of continuing jurisdiction over the child, an action under this section may be brought as a petition for further action under Section 11.07 of this code or a motion to modify under Section 14.08 of this code. If the child is under 18 years of age at the time an action to establish support is brought, a court may enter orders under Section 14.05 or this section, or both.

(g) In determining the amount of support to be paid after a child's 18th birthday, the specific terms and conditions of that support, and the rights, privileges, duties, and powers of both parents with respect to the support of the child, the court shall determine and give special consideration to:

(1) any existing or future needs of the adult child directly related to the adult child's mental or physical disability and the substantial care and personal supervision directly required by or related to that disability;

(2) whether the parent pays for or will pay for the care or supervision of the adult child or provides or will provide substantial care or personal supervision of the adult child;

(3) the financial resources available to both parents for the support, care, and supervision of the adult child; and

(4) any other financial resources or other resources or programs available for the support, care, and supervision of the adult child.

(h) An order under this section may contain provisions governing the rights, privileges, duties, and powers of both parents with respect to the support of the child and may be modified or enforced in the same manner as any other order under this title.

(i) Except as otherwise provided by this section, proceedings under this section are the same as in a suit affecting the parent-child relationship. Except as otherwise provided by this section, all substantive and procedural rights and remedies under this code or otherwise which relate to the establishment, modification, or enforcement of child support orders shall apply to actions brought or orders entered under this section.

(j) This section does not affect a parent's:

(1) cause of action for the support of a disabled child under any other law; or

(2) ability to contract for the support of a disabled child.

(k) This section does not affect the substantive or procedural rights or remedies of a person other than a parent, including a governmental or private entity or agency, with respect to the support of a disabled child under any other law.

SECTION 81. Chapter 14, Family Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. FRIEND OF THE COURT

Sec. 14.91. APPOINTMENT. (a) After a final order for child support or possession of or access to a child has been entered, a court may appoint a friend of the court on:

(1) the request of a person alleging that an order for child support or possession of or access to a child has been violated; or

(2) its own motion.

(b) A court may not appoint a friend of the court in a proceeding under Part D of Title IV of the federal Social Security Act (42 U.S.C. Section 651 et seq.).

(c) The duration of the appointment of a friend of the court is as determined by the court.

(d) In the appointment of a friend of the court, the court shall give preference to:

(1) a local domestic relations office;

(2) a local child support collection office;

(3) the local court official designated to enforce actions under the Revised Uniform Reciprocal Enforcement of Support Act (Chapter 21 of this code); or

(4) an attorney in good standing with the State Bar of Texas.

Sec. 14.92. AUTHORITY AND DUTIES. (a) A friend of the court may coordinate nonjudicial efforts to improve compliance with court orders relating to child support or possession of or access to a child by use of:

(1) telephone communication;

(2) written communication;

(3) one or more volunteer advocates under Section 11.101 of this code;

(4) informal pretrial consultation;

(5) one or more of the alternate dispute resolution methods under Chapter 154, Civil Practice and Remedies Code;

(6) a certified social worker;

(7) a family mediator; and

(8) employment agencies, retraining programs, and any similar resources to ensure that both parents can meet their financial obligations to the child.

(b) A friend of the court shall:

(1) report to the court or monitor reports made to the court on:

(A) the amount of child support collected as a percentage of the amount ordered; and

(B) efforts to ensure compliance with orders relating to possession of or access to a child; and

(2) institute actions to enforce, clarify, and modify court orders relating to child support or possession of or access to a child.

Sec. 14.93. DUTY OF LOCAL OFFICES AND OFFICIALS TO REPORT. A local domestic relations office, a local child support collection office, or a court official designated to receive child support under a court order shall report to the court or a friend of the court on a monthly basis:

(1) any delinquency and arrearage in child support payments; and

(2) any violation of a court order relating to possession of or access to a child.

Sec. 14.94. ACCESS TO INFORMATION. A friend of the court may arrange access to child support payment records by electronic means if the records are computerized.

Sec. 14.95. COMPENSATION. (a) A friend of the court is entitled to compensation for services rendered and for expenses incurred in rendering the services.

(b) The court may assess the amount that the friend of the court receives in compensation against any party to the suit in the same manner as it awards costs under Section 11.18 of this code.

(c) A friend of the court or a person, including the clerk of a court, who acts as the court's custodian of child support records may apply for and receive funds from the child support and court management account under Section 21.007, Government Code.

(d) A friend of the court who receives funds under Subsection (c) of this section shall use the funds to reimburse any compensation the friend of the court received under Subsection (b) of this section.

Sec. 14.96. EXPIRATION. This subchapter expires September 1, 1993.

SECTION 82. Sections 1 through 81 take effect September 1, 1989, and apply to a suit or action pending or filed on or after that date and to a presumption or determination of paternity on or after that date in relation to a child born before, on, or after that date. In suits to establish an order for support under Section 14.051, Family Code, or to modify or enforce an order previously established, whether the disabled child is a minor or an adult, Sections 1 through 81 apply only to a suit pending or filed on or after that date.

SECTION 83. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted viva voce vote.

On motion of Senator Krier and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 30 ON THIRD READING

Senator Krier moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 30** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Parker, Parmer, Washington.

The bill was read third time and was passed viva voce vote.

HOUSE CONCURRENT RESOLUTION 265 ON SECOND READING

On motion of Senator Brooks and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading:

H.C.R. 265, Memorializing Congress of the United States to reconsider the surtax provision of the Catastrophic Coverage Act and make every effort to ensure that the interests of senior citizens are truly served.

The resolution was read second time and was adopted viva voce vote.

CONFERENCE COMMITTEE REPORT
SENATE CONCURRENT RESOLUTION 165

Senator Sims submitted the following Conference Committee Report:

Austin, Texas
May 28, 1989

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.C.R. 165** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

SIMS	PARKER
BIVINS	DANBURG
KRIER	HIGHTOWER
GLASGOW	HURY
McFARLAND	EARLEY
On the part of the Senate	On the part of the House

WHEREAS, E. H. Brainard and others allege that:

(1) the patented field notes for the following surveys call for a common boundary with the Canadian River:

Sections 2, 3, 4, 5, 6, 7, 8, and 9, Block A, H&GN Ry Co Survey, Roberts County
Sections 10, 11, 12, 13, 14, 15, and 16, Block A, H&GN Ry Co. Survey, Roberts County
Sections 15, 16, 23, 24, 25, 26, 33, 34, 35, 36, 37, 38, 39, and 40, Block A, H&GN Ry Co. Survey, Roberts County
Sections 1, 2, 9, 10, 11, 12, 13, 14, 15, and 16, Block E, H&GN Ry Co. Survey, Hutchinson and Roberts counties
Sections 1, 2, 3, and 4, Block G, H&GN Ry Co Survey, Hutchinson County
Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13, Block 47, H&TC RR Co Survey, Hutchinson County
Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, and 32, Block 46, H&TC Ry Co. Survey, Roberts County
Sections 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, and 51, Block 46, H&TC Ry Co. Survey in Hutchinson County; and

(2) there is confusion and uncertainty as to the location of the boundary line between those surveys and the Canadian River and as a result there is a dispute as to the ownership of surface and minerals between the state and the riparian owners that can only be resolved by judicial action to determine and establish the boundary between the Canadian River and the riparian surveys under present conditions in a court of competent jurisdiction; now, therefore, be it

RESOLVED by the Legislature of the State of Texas, That the following are granted permission to sue the State of Texas and the General Land Office subject to Chapter 107, Civil Practice and Remedies Code, as added by Chapter 524, Acts of the 70th Legislature, Regular Session, 1987, to determine and establish the boundary line between the above described surveys and the Canadian River:

E. H. Brainard, II, 2125 Mary Ellen, Pampa, Texas
John F. (Jack) Allen, Route 1, Box 103, Skellytown, Texas
Ruth Wilson, Rt. 1, Box 49, Perryton, Texas
Barbara Woodward Lips, 305 Genesco Rd., San Antonio, Texas
Morrison Cattle Company, Rt. 1, Box 61, Pampa, Texas
Boone and Bea Pickens, P. O. Box 2009, Amarillo, Texas
Catherine C. Whittenburg Trusts, P. O. Box 26, Amarillo, Texas; and, be it further

RESOLVED, That the Commissioner of the General Land Office be served process as provided by Subdivision (3), Subsection (a), Section 107.002, Civil Practice and Remedies Code, as added by Chapter 524, Acts of the 70th Legislature, Regular Session, 1987; and, be it further

RESOLVED, That any final judgment adjudicating the title dispute in a suit brought concerning title to boundaries of the Canadian River under this resolution shall be limited to settling the title dispute and may not authorize an award of monetary damages or attorney's fees; and, be it further

RESOLVED, That the lawsuit herein authorized must be filed on or before the first anniversary of the final adoption of this resolution; and, be it further

RESOLVED, That the Canadian Municipal Water Authority is granted permission to intervene, if appropriate, in a suit brought as provided by this resolution; and, be it further

RESOLVED, That any user of the above described property is granted permission to intervene in the lawsuit, if found by the court to be a proper party, either individually or as a representative of a class; and, be it further

RESOLVED, That any final judgment adjudicating the location of the boundaries of the Canadian River in a suit brought under this resolution shall be res judicata as to those boundaries for all purposes, subject to the rules of law applicable to future erosion or accretion.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

COMMITTEE SUBSTITUTE HOUSE CONCURRENT RESOLUTION 238 ON SECOND READING

On motion of Senator Truan, on behalf of Senator Washington, and by unanimous consent, the regular order of business and Senate Rule 5.14 were suspended to take up for consideration at this time on its second reading:

C.S.H.C.R. 238, Requesting the Lieutenant Governor and Speaker to establish a special interim task force to study the Mentally Retarded Persons Act of 1977.

The resolution was read second time.

Senator Truan offered the following amendment to the resolution:

Amend **C.S.H.C.R. 238** as follows:

(1) Add "now, therefore, be it" immediately after the semi-colon at the end of the next to the last "WHEREAS" clause. Strike everything in the last "WHEREAS" clause, which reads as follows, in its entirety:

"WHEREAS, The average daily census in state schools for persons with mental retardation has continually decreased since the passage of the Mentally Retarded Persons Act and other advances in the field of Mental Retardation, declining from over 10,000 persons in 1977 to 7,300 persons in 1989 while the costs of serving these residents have doubled over the same period of time; now, therefore be it

(2) Strike the second resolving clause, which reads as follows, in its entirety:

"RESOLVED, That this special interim task force also study the issue of consolidation of state schools for persons with mental retardation using data generated from the "uniform cost accounting" procedures to be implemented during fiscal year 1990 and the "facility master plan" that will be completed by the Texas Department of Mental Health and Mental Retardation; and, be it further".

(3) Strike "Volunteer Services State Council" and "Texas Public Employees Association" from the text of the fourth resolving clause.

(4) On the last line of the next-to-last resolving clause strike "; and, be it further" and place a period immediately after "statutes".

(5) Strike the last resolving clause, which reads as follows, in its entirety:

"RESOLVED, That the task force also be specifically charged to make recommendations by September 1, 1990 to the Legislative Budget Board regarding whether or not consolidation of state schools should occur and, if so, to make recommendations regarding specific criteria for selecting the state school to be consolidated and, using such criteria, to recommend which state schools should be consolidated."

The amendment was read and was adopted viva voce vote.

The resolution as amended was adopted viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 1533 ON SECOND READING

On motion of Senator Whitmire and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1533, Relating to procedures for suspending a fire fighter or police officer in certain cities.

The bill was read second time and was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 1533 ON THIRD READING

Senator Whitmire moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 1533** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Parker, Parmer, Washington.

The bill was read third time and was passed by the following vote: Yeas 28, Nays 0. (Same as previous roll call)

(Senator Glasgow in Chair)

HOUSE BILL 370 ON SECOND READING

On motion of Senator Whitmire, on behalf of Senator Washington, and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 370, Relating to the offense of official oppression involving sexual harassment.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 370 ON THIRD READING

Senator Whitmire moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 370** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Parker, Parmer, Washington.

The bill was read third time and was passed viva voce vote.

MOTION TO PLACE HOUSE BILL 2376 ON SECOND READING

Senator Bivins moved to suspend the regular order of business and Senate Rule 5.14 to take up for consideration at this time:

H.B. 2376, Relating to making a replacement nomination for the general election for state and county officers.

On motion of Senator Bivins and by unanimous consent, the motion to suspend the regular order of business and Senate Rule 5.14 was withdrawn.

COMMITTEE SUBSTITUTE HOUSE BILL 2485 ON SECOND READING

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 2485, Relating to the conversion, creation, establishment, administration, powers, duties, operations, including toll road financing and operation, financing, bond and taxing authority, and dissolution of certain road districts; and the authority of such road districts to maintain and to transfer funds authorized for construction of projects; and the authority of certain counties to dedicate certain county tax revenues.

The bill was read second time.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 2485** as follows:

Delete SECTION 5 of the bill in its entirety and substitute the following:

"SECTION 5. Chapter 1, Title 116, Revised Statutes, is amended by adding Article 6674v-6 to read as follows:

Art. 6674v-6. COMMISSION APPROVAL OF TOLL ROAD BONDS. Any toll road project and the bonds of a county, municipality, or political subdivision (other than a county with a population greater than 2,100,000 according to the preceding federal census) or any non profit corporation acting on behalf of a county, municipality or political subdivision, payable in whole or in part from revenues derived from the ownership or operation of a toll road or turnpike must be reviewed by the State Highway and Public Transportation Commission. The Commission is authorized to contract with the Texas Turnpike Authority to review on its behalf any toll road project or any toll road bonds proposed pursuant to this section and to make recommendations to the Commission. The Texas Turnpike Authority is authorized to perform such review and analysis and to make recommendations as described herein to the Commission. The bonds or other debt obligations of any county, municipality, or political subdivision approved and

issued pursuant to this Act shall never be considered obligations of the State of Texas and remain obligations of the issuing entities."

The amendment was read and was adopted viva voce vote.

Senator Barrientos offered the following amendment to the bill:

Floor Amendment No. 2

Amend **C.S.H.B. 2485** by adding the following language after the period on line 64 of Page 1.

"The State Highways and Public Transportation Commission and the commissioners court of any county with a population of 400,000 or more (according to the last preceding federal census) which court has created a district which has issued bonds to acquire, construct, or improve an arterial road between a Federal highway and a State highway, excluding farm and ranch-to-market roads, may enter into an intergovernmental agreement which designates the arterial road as a farm or ranch-to-market road or a State highway for the purposes of completing construction and right-of-way acquisition and accepting maintenance and for the purpose of the county paying all or part of the principal and interest on the district's bonds which could include a refinancing or assumption of all or part of the bonds by the county. The agreement, if entered into, may require the county to pay an amount equal to the amount spent by the State Department of Highways and Public Transportation. This agreement is encouraged and can be implemented with or without the toll road provided for in this Act."

The amendment was read and was adopted viva voce vote.

On motion of Senator Armbrister and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 2485 ON THIRD READING

Senator Armbrister moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 2485** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Parker, Parmer, Washington.

The bill was read third time and was passed by the following vote: Yeas 28, Nays 0. (Same as previous roll call)

MESSAGE FROM THE HOUSE

House Chamber
May 28, 1989

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

The House has refused to concur in Senate amendments to **H.B. 911** and has requested the appointment of a Conference Committee to consider the differences between the two houses. The following have been appointed on the part of the House: T. Smith, Chair; Schlueter, Richardson, McCollough, Perez.

The House has refused to concur in Senate amendments to **H.B. 8** and has requested the appointment of a Conference Committee to consider the differences between the two houses. The following have been appointed on the part of the House: Morales, Chair; Stiles, Parker, Soileau, McCollough.

The House has refused to concur in Senate amendments to **H.B. 1520** and has requested the appointment of a Conference Committee to consider the differences between the two houses. The following have been appointed on the part of the House: Culberson, Chair; Harrison, Guerrero, Cain, Hilbert.

The House has refused to concur in Senate amendments to **H.B. 3171** and has requested the appointment of a Conference Committee to consider the differences between the two houses. The following have been appointed on the part of the House: Madla, Chair; Hilderbran, Perry, R. Lewis, Goolsby.

The House has adopted the Conference Committee Reports on the following bills by non-record votes:

S.B. 1516
S.B. 1405
S.B. 783
S.B. 600

The House has concurred in Senate amendments to the following House bills by non-record votes:

H.B. 427
H.B. 638
H.B. 1111
H.B. 1600
H.B. 1922
H.B. 669

S.C.R. 180, Suspending House and Senate rules to allow the Conference Committee on **S.B. 55** to add language not contained in either the House or Senate version of **S.B. 55**.

S.C.R. 170, Commending the service of Mr. Miguel A. Ortega to the people of his community.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 895**. The following have been appointed on the part of the House: Cain, Chair; Watkins, McDonald, F. Hill, D. Hudson.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 170**. The following have been appointed on the part of the House: Kubiak, Chair; Melton, Vowell, Parker, Waterfield.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 538**. The following have been appointed on the part of the House: Perry, Chair; Laney, T. Hunter, Rangel, Tallas.

The House has adopted the Conference Committee Reports on the following bills by non-record votes:

H.B. 3127
S.B. 224
S.B. 55

The House has adopted the Conference Committee Report on **S.B. 452** by a record vote of 143 Yeas, 1 Nay, 1 Present-not voting.

The House has refused to concur in Senate amendments to **H.B. 1517** and has requested the appointment of a Conference Committee to consider the differences between the two houses. The following have been appointed on the part of the House: Wentworth, Chair; Danburg, Turner, Seidlits, D. Hudson.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 531**. The following have been appointed on the part of the House: Vowell, Chair; Hury, Eckels, P. Hill of Dallas, Gibson.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 457**. The following have been appointed on the part of the House: Vowell, Chair; Granoff, Gibson, Guerrero, Schlueter.

S.C.R. 183, Allowing conferees to consider other matters on **S.B. 558**.

The House has refused to concur in Senate amendments to **H.B. 863** and has requested the appointment of a Conference Committee to consider the differences between the two houses. The following have been appointed on the part of the House: Vowell, Chair; Laney, Gibson, Guerrero, Jones.

The House has refused to concur in Senate amendments to **H.B. 1405** and has requested the appointment of a Conference Committee to consider the differences between the two houses. The following have been appointed on the part of the House: Craddick, Chair; Turner, Evans, A. Smith, Uher.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

HOUSE BILL 3065 ON SECOND READING

On motion of Senator Uribe and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 3065, Relating to the county courts at law in Hidalgo County and to the operation of the adult probation department in the county.

The bill was read second time.

Senator Uribe offered the following committee amendment to the bill:

H.B. 3065 is amended as follows: page 2, lines 1-4, delete entire Section 3 including Subsection (k).

Renumber subsequent sections accordingly.

The committee amendment was read and was adopted viva voce vote.

Senator Uribe offered the following amendment to the bill:

Amend **H.B. 3065** by adding the following two new sections to the bill, appropriately numbered, to read as follows and by renumbering the following sections accordingly:

SECTION ___. Section 25.1102, Government Code, is amended by adding Subsection (k) to read as follows:

(k) A judge of a county court at law may engage in the private practice of law. This subsection expires January 1, 1995.

SECTION ___. Effective January 1, 1995, Section 25.1102, Government Code, is amended by adding Subsection (l) to read as follows:

(l) A judge of a county court at law may not engage in the private practice of law.

The amendment was read and was adopted viva voce vote.

On motion of Senator Uribe and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 3065 ON THIRD READING

Senator Uribe moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 3065** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Parker, Parmer, Washington.

The bill was read third time and was passed by the following vote: Yeas 28, Nays 0. (Same as previous roll call)

COMMITTEE SUBSTITUTE HOUSE BILL 1582 ON SECOND READING

On motion of Senator Uribe and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1582, Relating to venue for prosecution of bigamy.

The bill was read second time and was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 1582 ON THIRD READING

Senator Uribe moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 1582** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Parker, Parmer, Washington.

The bill was read third time and was passed by the following vote: Yeas 28, Nays 0. (Same as previous roll call)

HOUSE BILL 1576 ON SECOND READING

On motion of Senator Johnson and by unanimous consent, the regular order of business and Senate Rule 5.14 were suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1576, Relating to the salute to the Texas flag.

The bill was read second time.

Senator Johnson offered the following amendment to the bill:

Amend **H.B. 1576** by striking Section 2 in its entirety and renumbering all other sections accordingly.

The amendment was read and was adopted viva voce vote.

On motion of Senator Johnson and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 1576 ON THIRD READING

Senator Johnson moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 1576** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Parker, Parmer, Washington.

The bill was read third time and was passed viva voce vote.

CONFERENCE COMMITTEE ON HOUSE BILL 1594

Senator McFarland called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 1594** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on **H.B. 1594** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators McFarland, Chairman; Haley, Harris, Henderson and Montford.

HOUSE BILL 241 ON SECOND READING

On motion of Senator McFarland and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 241, Relating to criminal penalties and civil actions for the interception of certain communications or communications signals, including stored communications, and to the use and authorization of the use of pen registers, trap and trace devices, and mobile tracking devices.

The bill was read second time.

Senator McFarland offered the following amendment to the bill:

Floor Amendment No. 1

Amend **H.B. 241**, SECTION 1, Art. 18.21, Sec. 3 by adding a new subsection (d) to read as follows:

(d) "The state may not use as evidence in any subsequent criminal proceeding any information gained through the use of a pen register, or a trap and trace device issued under subsection (b) of this Section if authorization for the pen register or trap and trace device is denied."

The amendment was read and was adopted viva voce vote.

Senator McFarland offered the following amendment to the bill:

Floor Amendment No. 2

Amend **H.B. 241**, SECTION 1, Art. 18.21, Sec. 3(a)(1) by deleting on line 8 the words "or conspiratorial activities characteristic of organized crime"

The amendment was read and was adopted viva voce vote.

On motion of Senator McFarland and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 241 ON THIRD READING

Senator McFarland moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 241** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Parker, Parmer, Washington.

The bill was read third time and was passed by the following vote: Yeas 28, Nays 0. (Same as previous roll call)

MOTION TO PLACE
HOUSE BILL 2024 ON SECOND READING

Senator Tejeda moved to suspend the regular order of business to take up for consideration at this time:

H.B. 2024, Relating to determination, terms, and operation of enterprise zones.

On motion of Senator Tejeda and by unanimous consent, the motion to suspend the regular order of business was withdrawn.

CONFERENCE COMMITTEE REPORT
HOUSE BILL 3183

Senator Ratliff submitted the following Conference Committee Report:

Austin, Texas
May 29, 1989

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 3183** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

RATLIFF	McWILLIAMS
BIVINS	HOLZHEAUSER
SIMS	YOST
HALEY	PERRY
	HOLLOWELL
On the part of the Senate	On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

SENATE RULES SUSPENDED RELATING TO CONFERENCE COMMITTEE ON HOUSE BILL 2335

On motion of Senator McFarland and by unanimous consent, the necessary Senate rules were suspended relating to limiting the jurisdiction of the Conference Committee on **H.B. 2335.**

CONFERENCE COMMITTEE REPORT HOUSE BILL 2335

Senator McFarland submitted the following Conference Committee Report:

Austin, Texas
May 28, 1989

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 2335** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

McFARLAND	HIGHTOWER
MONTFORD	WILLIAMSON
CAPERTON	S. JOHNSON
BROWN	GRANOFF
DICKSON	TELFORD
On the part of the Senate	On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT SENATE BILL 538

Senator Leedom submitted the following Conference Committee Report:

Austin, Texas
May 28, 1989

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 538** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

LEEDOM	PERRY
HARRIS	LANEY
HENDERSON	T. HUNTER

MONTFORD	RANGEL
McFARLAND	TALLAS
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the operation of aircraft by state agencies.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 9(d), State Aircraft Pooling Act (Article 4413(34b), Vernon's Texas Civil Statutes), is amended, and Subsection (e) is added to this section to read as follows:

(d) To the extent that aircraft are available, the board shall provide aircraft transportation [~~on request~~] to state officers and employees who are traveling on official business according to the coordinated passenger scheduling system and the priority scheduling system developed as part of the aircraft operations manual under Section 12 of this Act[~~, provided the agency leasing an aircraft shall be given first option on use of the aircraft except in cases of state emergency~~].

(e) the board may not provide aircraft transportation to a passenger if the passenger is to be transported to or from a place where the passenger:

(1) will make or has made a speech not related to official state business;

(2) will attend or has attended an event sponsored by a political party;

(3) will perform a service or has performed a service for which the passenger is to receive an honorarium, unless the passenger reimburses the board for the cost of transportation;

(4) will attend or has attended an event at which money is raised for private or political purposes; or

(5) will attend or has attended an event at which an audience was charged an admission fee to see or hear the passenger.

SECTION 2. Section 10, State Aircraft Pooling Act (Article 4413(34b), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 10. FACILITIES. (a) The board may acquire appropriate facilities for the accommodation of all aircraft owned or leased by the state. The facilities may be purchased or leased as determined by the board to be most economical for the state and as provided by legislative appropriations. The facilities may include adequate hangar space, an indoor passenger waiting area, a flight-planning area, communications facilities, and other related and necessary facilities.

(b) Except as otherwise provided by this subsection, a state agency that operates an aircraft may not use a facility in Austin other than a facility operated by the board for the storage, parking, fueling, and maintenance of the aircraft, whether or not the aircraft is based in Austin. In a situation determined by the board to be an emergency, the board may authorize a state agency to use a facility in Austin other than a board facility for the storage, parking, fueling, and maintenance of an aircraft. [~~No state agency shall acquire such facilities without permission from the board.~~]

SECTION 3. The State Aircraft Pooling Act (Article 4413(34b), Vernon's Texas Civil Statutes) is amended by adding Section 11 to read as follows:

Sec. 11. AIRCRAFT UTILIZATION REPORT. (a) The Legislative Budget Board, in cooperation with the board, shall:

(1) develop an annual aircraft utilization form to be used to gather information relating to the use of state-operated aircraft; and

(2) develop procedures for the submission of the form to the board and the Legislative Budget Board by each state agency that operates an aircraft.

(b) The Legislative Budget Board, in cooperation with the board, may from time to time adopt changes in the form and procedures.

SECTION 4. The State Aircraft Pooling Act (Article 4413(34b), Vernon's Texas Civil Statutes) is amended by adding Section 12 to read as follows:

Sec. 12. AIRCRAFT OPERATIONS MANUAL. (a) The board shall:

(1) develop a manual that establishes minimum standards for the operation of aircraft by state agencies; and

(2) develop procedures for the distribution of the manual to state agencies.

(b) The manual developed under this section must address the following issues:

(1) pilot certification standards, including medical requirements for pilots;

(2) recurring training programs for pilots;

(3) general operating and flight rules;

(4) coordinated passenger scheduling; and

(5) other issues determined by the board to be necessarily addressed to ensure the efficient and safe operation of aircraft by state agencies.

(c) The board shall confer with and solicit the written advice of state agencies determined by the board to be principal users of aircraft operated by the board and, to the extent practicable, incorporate that advice in the development of the manual and subsequent changes to the manual.

SECTION 5. The State Aircraft Pooling Act (Article 4413(34b), Vernon's Texas Civil Statutes) is amended by adding Section 13 to read as follows:

Sec. 13. TRAVEL LOGS. (a) The Legislative Budget Board, in cooperation with the board, shall:

(1) develop a travel log form to be used to gather information relating to the use of state-operated aircraft;

(2) develop procedures to ensure that persons who operate or travel as passengers on state-operated aircraft provide in a legible manner the information requested of them by the form; and

(3) develop procedures for the submission of the form to the board and the Legislative Budget Board by each state agency that operates an aircraft.

(b) The travel log form developed under this section must request the following information about a state-operated aircraft each time the aircraft is flown:

(1) a mission statement, which may appear as a selection to be identified from general categories appearing on the form;

(2) the name, state agency represented, and signature of each person who is a passenger or crew member of the aircraft; and

(3) other information determined by the Legislative Budget Board and the board to be necessary to monitor the proper use of the aircraft.

(c) The Legislative Budget Board, in cooperation with the board, may from time to time adopt changes in the travel log form and procedures.

SECTION 6. The State Aircraft Pooling Act (Article 4413(34b), Vernon's Texas Civil Statutes) is amended by adding Section 14 to read as follows:

Sec. 14. BILLING PROCEDURES. The Legislative Budget Board, in cooperation with the board and the State Auditor, shall develop a billing procedure for passenger travel on state-operated aircraft.

SECTION 7. The State Aircraft Pooling Act (Article 4413(34b), Vernon's Texas Civil Statutes) is amended by adding Section 15 to read as follows:

Sec. 15. PILOTS. A person may not operate a state-operated aircraft unless:

(1) the person is a pilot employed by the board; or

(2) the board grants the person a specific exemption from the application of this section.

SECTION 8. (a) The Legislative Budget Board in cooperation with the State Aircraft Pooling Board shall adopt the form and the procedures described by Sections 3 and 5 of this Act not later than January 1, 1990.

(b) The State Aircraft Pooling Board shall adopt the manual described by Section 4 of this Act not later than January 1, 1990.

(c) The Legislative Budget Board in cooperation with the State Aircraft Pooling Board and the state auditor shall adopt the procedures described in Section 6 of this Act not later than January 1, 1990.

SECTION 9. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 1989.

(b) Section 8 of this Act takes effect January 1, 1990.

SECTION 10. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

SENATE BILL 1807 WITH HOUSE AMENDMENT

Senator Barrientos called **S.B. 1807** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Floor Amendment on Third Reading - A. Moreno

Amend **S.B. 1807** on third reading by inserting the following and appropriately numbering the succeeding sections:

SECTION 2. Subchapter A, Chapter 392, Local Government Code, is amended by adding Section 392.006 to read as follows:

Sec. 392.006. UNIT OF GOVERNMENT; GOVERNMENTAL FUNCTIONS. For all purposes, including the application of the Texas Tort Claims Act (Chapter 101, Civil Practice and Remedies Code), a housing authority is a unit of government and the functions of a housing authority are essential governmental functions and not proprietary functions. Provided, however, a housing authority shall be subject to all landlord obligations and tenant remedies, other than a suit for personal injuries, as set forth in any lease or rental agreement and in Chapters 24, 54, 91, and 92 of the Texas Property Code.

The amendment was read.

Senator Barrientos moved to concur in the House amendment to **S.B. 1807**.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Parker, Parmer, Washington.

SENATE BILL 1813 WITH HOUSE AMENDMENTS

Senator Armbrister called **S.B. 1813** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment - Williamson

Amend **S.B. 1813** as follows:

(1) Insert the following on page 6, between lines 14 and 15, as Sections 3-6 of the bill, and renumber the subsequent sections appropriately:

SECTION 3. Section 6.01, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6.01. DEFINITIONS. In this article, "space" means office space, warehouse space, laboratory space, storage space exceeding 1,000 gross square feet, or any combination thereof, but does not include aircraft hangar space, radio antenna space, boat storage space, vehicle parking space, or space to be utilized for less than one month for meetings, conferences, seminars, conventions, displays, examinations, auctions, or other similar purposes.[:

[~~(1) "Commission" means the State Purchasing and General Services Commission.~~

[~~(2) "State agency" means a board, a commission, a department, an office, or other agency of the state government.~~]

SECTION 4. Section 6.04, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6.04. PREFERENCE. In filling a request for space, the commission shall give [a] preference to available state-owned space. The commission shall give first priority in assigning office space in state buildings financed from bond proceeds to state agencies funded from sources other than general revenue [~~the most cost effective method of filling the space~~].

SECTION 5. Subsections (b) and (c), Section 6.05, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) The space may be leased from another state agency through an interagency contract, or from the federal government, [~~or~~] a political subdivision, including a county, a municipality, a school district, a water or irrigation district, a hospital district, a council of government, or a regional planning council, or from a statewide Texas public retirement system in a commercial building that is 100 percent directly or indirectly owned by the retirement system, through a negotiated contract.

(c) The space may be leased from a private source through competitive bidding or through competitive sealed proposals under Section 6.051 of this article. The [~~whenever possible, but the~~] commission[~~, with the approval of the state agency,~~] may negotiate for [~~the~~] space when it makes a written determination that competition is not available.

SECTION 6. Article 6, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 6.051 to read as follows:

Sec. 6.051. COMPETITIVE SEALED PROPOSALS. (a) The commission may lease space by following a procedure using competitive sealed proposals if the commission determines that competitive bidding is not practical or is disadvantageous to the state. The commission, or an institution of higher education entering into the lease if leasing authority has been delegated to that institution under Section 6.111 of this article, must first determine that competitive bidding is not practical or is disadvantageous to the state. If the competitive sealed proposal procedure is to be utilized by the institution of higher education, the institution shall follow the procedures outlined by this section and any duly promulgated rules adopted by the commission.

(b) The commission shall solicit proposals by publication of a notice of request for proposals in the Texas Register and in a newspaper of general circulation in the county where the space is to be leased.

(c) The commission shall open each proposal in a manner that does not disclose the contents of the proposal during the process of negotiating with competing offerors.

(d) As provided in a request for proposals and under rules adopted by the commission, the commission may discuss acceptable or potentially acceptable proposals with offerors in order to assess an offeror's ability to meet the solicitation requirements and to secure the most advantageous lease contract for the state. After

the submission of a proposal but before making an award, the commission may permit the offeror to revise the proposal in order to obtain the best final offer. The commission may not disclose any information derived from proposals submitted from competing offerors in conducting discussions under this subsection. The commission shall provide to each offeror whose offer meets the minimum requirements set forth in the request for proposals with a reasonable opportunity for discussion and revision of its proposal.

(e) The commission shall invite a requisitioning agency to participate in discussions and negotiations conducted under Subsection (d) of this section.

(f) The commission shall make a written award of a lease to the offeror whose proposal is the most advantageous to the state, considering price and the evaluation factors set forth in the request for proposals, except that if the commission finds that none of the offers is acceptable, it shall refuse all offers. The commission may not use any other factors or criteria in its evaluation. The contract file must state in writing the basis on which the award is made.

(2) On page 11, strike lines 5-11 and substitute the following:

SECTION 7. (a) Except as provided by Subsection (b) of this section, this Act takes effect immediately.

(b) Sections 3-6 of this Act take effect September 1, 1989.

SECTION 8. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

Floor Amendment on Third Reading - Kubiak

Amend **S.B. 1813** on page 11 between lines 4 and 5 by adding a new section of the bill to be numbered appropriately, to read as follows and renumbering the subsequent sections accordingly:

SECTION 3. Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes), is amended by adding Section 8A to read as follows:

Sec. 8A. CERTAIN LEASES PROHIBITED. (a) An elected officer described by Section 2(2)(A) or (B) of this Act or a business entity in which the officer has a substantial interest may not lease to the state or a state governmental body any office space or other real property. A lease made in violation of this prohibition is void.

(b) In this section, "state governmental body" means:

(1) a state agency;

(2) the legislature or a legislative agency; or

(3) the Supreme Court of Texas, the Court of Criminal Appeals, or a state judicial agency. This section does not apply to any elected official in an elected office at the time of the effective date of this act for as long as they hold that office.

The amendments were read.

Senator Armbrister moved to concur in the House amendments to **S.B. 1813**.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Parker, Parmer, Washington.

SENATE BILL 788 WITH HOUSE AMENDMENTS

Senator Brooks called **S.B. 788** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Local and Consent Calendars Committee Amendment No. 1 - Madla

Amend **S.B. 788** as follows:

On page 2, line 3, delete "on the immediate container" between "marked" and "to"

On page 2, line 4, delete "and are not for resale" after the word "samples"

Local and Consent Calendars Committee Amendment No. 2 - Hinojosa

Amend **S.B. 788** on page 2, lines 3 through 4, by striking (C) in its entirety and substituting in lieu thereof the following:

(C) marked on the immediate container to indicate that they are samples, or recorded in records indicating that they are samples, which records shall be accessible as provided under state and federal law.

The amendments were read.

Senator Brooks moved to concur in the House amendments to **S.B. 788**.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Parker, Parmer, Washington.

SENATE BILL 1519 WITH HOUSE AMENDMENTS

Senator Brooks called **S.B. 1519** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment - Saunders

Amend **S.B. 1519** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Subsection (b), Section 4, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The department shall [~~is authorized to~~] develop a state solid waste plan for all solid waste under its jurisdiction and shall update that plan at least once every five years or more often if required by federal law. The[~~, and the~~] commission is authorized to develop a state solid waste plan for all solid waste under its jurisdiction. The state agencies shall coordinate the solid waste plans developed. In the development of a solid waste plan for solid waste under its jurisdiction, the department shall consider the preference of municipal solid waste management methods under Sections 3(e)(3) and 3(e)(4) of this Act. Before a state agency adopts its solid waste plan or makes any significant amendments to the plan, the Texas Air Control Board shall have the opportunity to comment and make recommendations on the proposed plan or amendments, and shall be given such reasonable time to do so as the state agency may specify.

SECTION 2. Subsection (c), Section 5, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) As sufficient funds are made available by the department, a [~~A~~] county shall [~~may~~] develop county solid waste plans and coordinate those plans with the plans of:

(1) local governments, regional planning agencies, other governmental entities, and the department, as prescribed by Section 7, Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Article 4477-7c, Vernon's Texas Civil Statutes); and

(2) the commission.

SECTION 3. Section 7, Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Article 4477-7c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7. REGIONAL AND LOCAL SOLID WASTE MANAGEMENT PLANS. (a) The board shall adopt rules for the implementation of this section, including but not limited to procedures for review of regional and local solid waste management plans and criteria for approval of regional and local solid waste management plans. The board by rule shall require as a criterion of approval of a regional or local solid waste management plan under this section that the plan reflect due consideration of the preference of municipal solid waste management methods under Sections 3(e)(3) and 3(e)(4), Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes). A regional or local solid waste management plan developed under this Act must:

(1) include a description and an assessment of current efforts in the geographic area covered by the plan to minimize production of municipal solid wastes, including sludge, and efforts to reuse or recycle wastes;

(2) identify additional opportunities for waste minimization and reuse or recycling of waste; [~~and~~]

(3) make recommendations for encouraging and achieving a greater degree of waste minimization and reuse or recycling of wastes in the geographic area covered by the plan;

(4) encourage cooperative efforts between local governments in the siting of landfills for the disposal of solid waste;

(5) consider the need to transport waste between municipalities, from a municipality to an area within the jurisdiction of a county, or between counties, particularly if a technically suitable site for a landfill does not exist within a particular area; and

(6) allow a local government to justify the need for a landfill within its jurisdiction to dispose of the solid waste generated within the jurisdiction of another local government that does not have a technically suitable site for a landfill within its jurisdiction.

(b) In this subsection, "council of governments" means a regional planning commission created under Chapter 391, Local Government Code. A council of governments has primary responsibility for the regional planning process. A planning region may be divided into subregions as part of the regional planning process. If a planning region is divided into subregions, the council of governments with jurisdiction in the planning region may require the local governments comprising a subregion to develop a joint local solid waste management plan that provides for solid waste services for solid waste generated within that subregion. A council of governments may:

(1) employ personnel necessary to carry out the regional planning process, including an administrator for each subregion if subregions are established; and

(2) adopt rules necessary to carry out responsibilities concerning the regional planning process.

(c) [~~(b)~~] A planning region shall [~~may~~] develop a regional solid waste management plan as provided by Subsection (e) of this section that must conform

to the requirements of the state solid waste management plan. A regional solid waste management plan shall [~~may~~] be submitted to the department for review. If the department determines that a regional solid waste management plan conforms to the requirements adopted by the board, the department shall submit the regional solid waste management plan to the board for approval. If the department determines that a regional solid waste management plan does not conform to the requirements adopted by the board, the department shall give written notice to the planning region of each aspect of the plan that must be changed to conform to board requirements. After the changes have been made in the plan as provided by the department, the department shall submit the plan to the board for approval. A regional solid waste management plan approved by the board shall be adopted by rule in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(d) [~~(c)~~] A local government shall [~~may~~] develop a local solid waste management plan as provided by Subsection (e) of this section that must conform to the requirements of the [a] regional solid waste management plan for the region encompassing the jurisdiction of the local government which has been adopted by rule in accordance with Subsection (c) [~~(b)~~] of this section. [~~If there is no adopted regional solid waste management plan, the local solid waste management plan must conform to the state solid waste management plan.~~] A local solid waste management plan shall [~~may~~] be submitted to the department for review. If the department determines that a local solid waste management plan conforms to the requirements adopted by the board, the department shall submit the local solid waste management plan to the board for approval. If the department determines that a local solid waste management plan does not conform to the requirements adopted by the board, the department shall give written notice to the local government of each aspect of the plan that must be changed to conform to board requirements. After the changes have been made in the plan as provided by the department, the department shall submit the plan to the board for approval. A local plan approved by the board shall be adopted by rule in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(e) The department shall establish a time schedule by which each planning region existing on the effective date of this subsection shall develop a regional solid waste management plan, and local governments located in those planning regions shall develop local solid waste management plans as required by this section. The time schedule shall be based on the availability of funds to provide financial assistance to planning regions and local governments as prescribed by Section 8 of this Act for the development of those plans. Unless otherwise required by federal law or federal regulations, a planning region or local government is not required to develop a solid waste management plan until after the date on which funds are provided to that planning region or local government by the department as prescribed by Section 8 of this Act for the development of plans. Each planning region existing on the effective date of this subsection shall develop a regional solid waste management plan, and local governments located in that planning region shall develop local solid waste management plans in accordance with the time schedule established by the department and as provided by this section.

(f) On adoption of [~~(d) If~~] a regional or local solid waste management plan [~~is adopted~~] by rule of the board, public and private solid waste management activities and state regulatory activities must conform to the adopted regional or local solid waste management plan. Under procedures and criteria adopted by the board, the department may grant a variance from an adopted regional or local solid waste management plan.

(g) [~~(e)~~] A regional or local solid waste management plan must be the result of a planning process that is related to proper management of solid waste in the planning area under consideration and that identifies problems and collects and evaluates data necessary to provide a written public statement of goals, objectives, and recommended actions intended to accomplish those goals and objectives. A regional solid waste management plan must consider the entire area within an identified planning region. A local solid waste management plan must consider all the area within the jurisdiction of one or more local governments but may not include an entire planning region.

(h) [~~(f)~~] In order to develop programs to implement regional or local solid waste management plans or other solid waste management alternatives, to include resource recovery, under this Act, a study must be made to determine their feasibility and acceptance. This study shall normally be conducted in three phases: a screening study, a feasibility study, and an implementation study. Public agencies that have conducted any or portions of one or more phases may qualify for assistance to accomplish other phases or portions of phases. After each phase, a determination will be made by the governing body as to whether to proceed to the next phase.

(i) [~~(g)~~] A screening study provides a survey and assessment of the various factors impacting the suitability of resource recovery or other solid waste management systems with the scope and detail needed to make an initial determination as to whether resource recovery or the other solid waste management systems are potentially successful alternatives to existing systems. The survey and assessment should include:

(1) the amount and characteristics of waste available;

(2) the suitability and economics of existing solid waste management systems;

(3) institutional factors impacting potential alternatives;

(4) technologies available;

(5) identification of potential material and energy markets;

(6) economics of alternative systems; and

(7) interest of the local citizenry in available alternatives.

(j) [~~(h)~~] A feasibility study provides an evaluation of alternatives that:

(1) identifies current solid waste management practices and costs;

(2) analyzes the waste stream and its availability by composition and quantity;

(3) identifies potential markets and obtains statements of interest for recovered materials and energy;

(4) identifies and evaluates alternative solid waste management systems;

(5) provides an assessment of potential impacts of alternatives in terms of their public health, physical, social, economic, fiscal, environmental, and aesthetic implications;

(6) conducts and evaluates results of public hearings or surveys of local citizen opinions; and

(7) makes recommendations on alternatives for further considerations.

(k) [~~(i)~~] An implementation study provides a recommended course of action for a public agency. An implementation study:

(1) provides for the collection and analysis of data;

(2) identifies and characterizes solid waste problems and issues;

(3) determines waste stream composition and quantity;

(4) identifies and analyzes alternatives;

(5) evaluates risk elements of alternatives;

(6) identifies and solidifies markets;

(7) makes site analyses;

(8) evaluates financing options and recommends preferred methods of financing;

(9) evaluates the application of resource recovery technologies;

(10) identifies and discusses potential impacts of alternative systems;

(11) provides for public participation and recommends preferred alternatives; and

(12) provides for implementation.

(l) [(f)] A study may not include final design and working drawings of any request for proposals for project facilities or operations.

SECTION 4. Subsection (e), Section 3, County Solid Waste Control Act (Article 4477-8, Vernon's Texas Civil Statutes), is amended to read as follows:

(e) "Public agency" means any district as defined herein, any city as defined herein, a regional planning commission created under Chapter 391, Local Government Code, or any other political subdivision or agency of the state having the power to own and operate solid waste collection, transportation, or disposal facilities or systems.

SECTION 5. The Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes) is amended by adding Section 4B to read as follows:

Sec. 4B. SOLID WASTE DISPOSAL FEES. (a) The department shall charge a fee on solid waste that is disposed of within this state. The fee is 50 cents per ton or 17 cents per cubic yard of compacted solid waste and 10 cents per cubic yard of uncompacted solid waste received for disposal at a landfill. The department shall set the fee for sludge or similar waste applied to the land for beneficial use on a dry weight basis and for solid waste received at an incinerator or a shredding and composting facility at one-half of the fee set for solid waste received for disposal at a landfill. The department may charge comparable fees for other means of solid waste disposal that are used.

(b) The department may raise or lower the fees established under Subsection (a) of this section in accordance with department spending levels established by the legislature.

(c) The department shall charge an annual registration fee to a transporter of solid waste who is required to register with the department under rules adopted by the board of health. The board of health by rule shall adopt a fee schedule. The fee shall be reasonably related to the volume or the type of waste transported, or both the volume and type of waste transported. The registration fee charged under this subsection may not be less than $25 or more than $500.

The operator of each municipal solid waste facility shall maintain records and report to the department annually on the amount of solid waste that the facility transfers, processes, stores, treats, or disposes of, and each transporter required to register with the department shall maintain records and report to the department annually on the amount of solid waste that the transporter transports. The board of health by rule shall establish procedures for recordkeeping and reporting required under this subsection.

(e) Revenue received by the department under this section shall be deposited in the state treasury to the credit of the department. At least one-half of the revenue is dedicated to the department's municipal solid waste permitting and enforcement programs and related support activities, and the balance of the revenue is dedicated to pay for activities that will enhance the state's solid waste management program, including:

(1) provision of funds for the municipal solid waste management planning fund and the municipal solid waste resource recovery applied research and technical assistance fund established by the Comprehensive Municipal Solid Waste

Management, Resource Recovery, and Conservation Act (Article 4477-7c, Vernon's Texas Civil Statutes);

(2) provision of technical assistance to local governments concerning solid waste management;

(3) establishment of a solid waste resource center in the department and an office of waste minimization and recycling;

(4) provision of supplemental funding to local governments for the enforcement of this Act and the Texas Litter Abatement Act (Article 4477-9a, Vernon's Texas Civil Statutes);

(5) conduct of a statewide public awareness program concerning solid waste management;

(6) provision of supplemental funds for other state agencies with responsibilities concerning solid waste management;

(7) conduct of research to promote the development and stimulation of markets for recycled waste products;

(8) creation of a state municipal solid waste superfund for:

(A) the cleanup of unauthorized tire dumps and solid waste dumps for which a responsible party cannot be located or is not immediately financially able to provide the cleanup; and

(B) the cleanup or proper closure of abandoned or contaminated municipal solid waste sites for which a responsible party is not immediately financially able to provide the cleanup; and

(9) provision of funds for other programs that the board of health may consider appropriate to further the purposes of this Act.

SECTION 6. Section 4(k), Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is repealed.

SECTION 7. (a) This Act takes effect September 1, 1989, and applies only to fees charged by the Texas Department of Health:

(1) concerning municipal solid waste that is disposed of at a municipal solid waste management facility on or after January 1, 1990; and

(2) for the registration of a transporter of solid waste who registers with the department on or after January 1, 1990.

(b) Not later than January 1, 1990, the Texas Department of Health shall adopt rules necessary to carry out this Act.

SECTION 8. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment - Saunders

Amend **C.S.S.B. 1519** on page 4, line 4, by deleting the word "require" and substituting the word "assist".

The amendments were read.

On motion of Senator Brooks and by unanimous consent, the Senate concurred in the House amendments to **S.B. 1519** viva voce vote.

CONFERENCE COMMITTEE ON HOUSE BILL 2248

Senator Santiesteban called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 2248** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on **H.B. 2248** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Santiesteban, Chairman; Carriker, Montford, Brown and Lyon.

SENATE BILL 376 WITH HOUSE AMENDMENT

Senator Brown called **S.B. 376** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Amendment - Parker

Amend **S.B. 376** by striking all below the enacting clause and substituting the following:

SECTION 1. Article 17.03, Code of Criminal Procedure, is amended to read as follows:

Art. 17.03. PERSONAL BOND. (a) Except as provided by Subsection (b) of this article, a magistrate [~~The court before whom the case is pending~~] may, in the magistrate's [~~its~~] discretion, release the defendant on his personal bond without sureties or other security.

(b) Only the court before whom the case is pending may release on personal bond a defendant who:

(1) is charged with an offense under the following sections of the Penal Code:

(A) Section 19.03 (Capital Murder);

(B) Section 20.04 (Aggravated Kidnapping);

(C) Section 22.021 (Aggravated Sexual Assault);

(D) Section 22.03 (Deadly Assault on Law Enforcement or Corrections Officer, Member or Employee of Board of Pardons and Paroles, or Court Participant);

(E) Section 22.04 (Injury to a Child or an Elderly Individual);

(F) Section 29.03 (Aggravated Robbery);

(G) Section 30.02 (Burglary); or

(H) Section 71.02 (Engaging in Organized Criminal Activity);

(2) is charged with an aggravated felony under the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes); or

(3) does not submit to testing for the presence of a controlled substance in the defendant's body as requested by the court or magistrate under Subsection (c) of this article, or submits to testing and the test shows evidence of the presence of a controlled substance in the defendant's body.

(c) When setting a personal bond under this chapter, on reasonable belief by the investigating or arresting law enforcement agent or magistrate of the presence of a controlled substance in the defendant's body or on the finding of drug or alcohol abuse related to the offense for which the defendant is charged, the court or a magistrate shall require as a condition of personal bond that the defendant submit to testing for alcohol or a controlled substance in the defendant's body and participate in an alcohol or drug abuse treatment or education program if such a condition will serve to reasonably assure the appearance of the defendant for trial.

(d) The state may not use the results of any test conducted under this chapter in any criminal proceeding arising out of the offense for which the defendant is charged.

(e) Costs of testing may be assessed as court costs or ordered paid directly by the defendant as a condition of bond.

(f) In this article, "controlled substance" has the meaning assigned by Section 1.02, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes).

(g) The court may order that a personal bond fee assessed under Section 17.42, Code of Criminal Procedure, be:

(1) paid before the defendant is released;

(2) paid as a condition of bond;

(3) paid as court costs;

(4) reduced as otherwise provided for by statute; or

(5) waived.

SECTION 2. Article 17.031, Code of Criminal Procedure, is amended to read as follows:

Art. 17.031. RELEASE ON PERSONAL BOND. (a) [~~A magistrate may, upon the setting of a bond, release the defendant on his personal bond, in which case the bond may be transferred to any court wherein the case may later be heard, and subsequent courts may not revoke the personal bond except for good cause shown.~~

[~~(b)~~] Any magistrate in this state may release a defendant eligible for release on personal bond under Article 17.03 of this code on his personal bond where the complaint and warrant for arrest does not originate in the county wherein the accused is arrested if the magistrate would have had jurisdiction over the matter had the complaint arisen within the county wherein the magistrate presides. The personal bond may not be revoked by the judge of the court issuing the warrant for arrest except for good cause shown.

(b) [~~(c)~~] If there is a personal bond office in the county from which the warrant for arrest was issued, the court releasing a defendant on his personal bond will forward a copy of the personal bond to the personal bond office in that county.

SECTION 3. Article 17.19(b), Code of Criminal Procedure, is amended to read as follows:

(b) If the court or magistrate finds that there is cause for the surety to surrender his principal, the court shall issue a warrant of arrest for the principal. It is an affirmative defense to any liability on the bond that:

(1) the court or magistrate refused to issue a warrant of arrest for the principal; and

(2) after the refusal to issue the warrant the principal failed to appear.

SECTION 4. Chapter 17, Code of Criminal Procedure, is amended by adding Article 17.43 to read as follows:

Art. 17.43. HOME CURFEW AND ELECTRONIC MONITORING AS CONDITION. (a) A magistrate may require as a condition of release on personal bond that the defendant submit to home curfew and electronic monitoring under the supervision of an agency designated by the magistrate.

(b) Cost of monitoring may be assessed as court costs or ordered paid directly by the defendant as a condition of bond.

SECTION 5. Article 17.40, Code of Criminal Procedure, is repealed.

SECTION 6. (a) The change in law made by this Act applies only to release on personal bond following an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) Release on personal bond following an offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 7. This Act takes effect September 1, 1989.

SECTION 8. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Brown and by unanimous consent, the Senate concurred in the House amendment to **S.B. 376** viva voce vote.

SENATE BILL 644 WITH HOUSE AMENDMENT

Senator Brown called **S.B. 644** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Floor Amendment - Beauchamp

Amend Section 1, Subsection (a) to read: In a city having a population of 900,000 or more according to the most recent federal census, a person commits an offense if he intentionally or knowingly:

The amendment was read.

Senator Brown moved to concur in the House amendment to **S.B. 644**.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Parker, Parmer, Washington.

SENATE BILL 1351 WITH HOUSE AMENDMENTS

Senator Carriker called **S.B. 1351** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Floor Amendment No. 1 - McDonald

Amend **S.B. 1351** by adding new Sections 2, 3, 4, and 5 to read as follows and by renumbering Section 2 of **S.B. 1351** to become Section 6:

SECTION 2. Chapter 61, Education Code, is amended by adding Subchapter L to read as follows:

SUBCHAPTER L. FINANCIAL AID FOR PROFESSIONAL NURSING STUDENTS AND VOCATIONAL NURSING STUDENTS AND LOAN REPAYMENT PROGRAM FOR CERTAIN NURSES

Sec. 61.651. DEFINITIONS. In this subchapter:

(1) "Professional nursing student" means a student enrolled in an institution of higher education in a course of study leading to an initial or an advanced degree in professional nursing.

(2) "Vocational nursing student" means a student enrolled in a nonprofit school or program that is preparing the student for licensure as a licensed vocational nurse.

Sec. 61.652. SCHOLARSHIP PROGRAM. The Texas Higher Education Coordinating Board shall establish and administer, using funds appropriated for that purpose and in accordance with this subchapter and board rules, a scholarship program for professional nursing students and vocational nursing students.

Sec. 61.653. EMPLOYER MATCHING FUND PROGRAM. The board shall establish and administer, using funds appropriated for that purpose and in

accordance with this subchapter and board rules, a matching fund program under which an employer may sponsor a professional nursing student or a vocational nursing student by contributing to the costs of the student's education and having that contribution matched in whole or in part by state funds appropriated for that purpose.

Sec. 61.654. LOAN REPAYMENT PROGRAM. The board shall establish and administer, using funds appropriated for that purpose and in accordance with this subchapter and board rules, an educational loan repayment program for registered nurses and licensed vocational nurses.

Sec. 61.655. PURPOSE. (a) A scholarship program, matching fund program, or loan repayment program established under this subchapter shall be established and administered in a manner that the board determines best promotes the health care and educational needs of this state.

(b) In determining what best promotes the health care and educational needs of this state, the board shall consider at a minimum the following factors relating to each person being assisted:

(1) ethnic or racial minority status;

(2) scholastic ability and performance;

(3) geographical area of nursing practice;

(4) financial need;

(5) whether the person receives Aid to Families with Dependent Children or participates in another public welfare program;

(6) employment by a state agency;

(7) employment on a nursing school faculty; and

(8) whether the person at the time of application to participate in the scholarship program, matching fund program, or loan repayment program under this subchapter is a practicing nurse in an area with an acute nursing shortage or is likely to practice in such an area.

Sec. 61.656. RULES. (a) The board shall adopt rules necessary for the administration of this subchapter.

(b) The board shall adopt rules relating to the establishment of the scholarship program under Section 61.652 of this code, including rules providing eligibility criteria and the maximum amount of any scholarship and rules relating to the establishment and administration of the loan repayment program under Section 61.654 of this code, including rules providing eligibility criteria and the maximum amount of loan repayment available.

(c) The board shall adopt rules relating to the establishment and administration of the matching fund program under Section 61.653 of this code, including rules providing:

(1) eligibility criteria for sponsoring employers and for students;

(2) the minimum and maximum employer contributions that will be matched;

(3) conflict resolution procedures for resolving disputes between the sponsoring employer and the student;

(4) the form and manner in which the sponsoring employer must make its contribution, including whether the contribution will be made in a lump-sum payment at the beginning of a semester or whether the contribution will be made in several payments over a period of time;

(5) conditions under which a student may be required to repay funds received under the matching fund program because of inability to fulfill obligations under the program;

(6) conditions under which a sponsoring employer would be returned any unexpended portion of the employer's contribution;

(7) conditions under which the coordinating board could cancel an agreement entered into under Subsection (d) of this section between the student and the sponsoring employer; and

(8) a procedure for the disbursement of funds that provides for participation by a variety of employers consistent with the purposes established under this subchapter.

(d) A student and the student's sponsoring employer shall enter into a standard agreement as provided by board rules adopted under this subsection. The board shall adopt rules providing for a standard agreement for use in connection with the matching fund program under Section 61.653 of this code, which agreement must include provisions:

(1) requiring the sponsoring employer to employ the student while in school and to provide a work schedule that accommodates the student's class schedule;

(2) requiring the student to remain in the employ of the sponsoring employer for at least one year after graduation;

(3) requiring the student to repay funds received if the student fails to fulfill his or her responsibilities under the matching fund program, except for specified reasons;

(4) providing for forfeiture of any funds contributed by the sponsoring employer if the employer fails to fulfill its obligations under the matching fund program, except for specified reasons;

(5) requiring the student and sponsoring employer to submit any dispute relating to responsibilities under the matching fund program to be resolved under the dispute resolution procedures established by the board; and

(6) granting authority to the board to cancel an agreement entered into by a student and the student's sponsoring employer if certain specified conditions are not met.

(e) The board shall adopt rules providing for the distribution of information about the scholarship program, matching fund program, and loan repayment program established under this subchapter to:

(1) employers of registered nurses or licensed vocational nurses;

(2) associations of employers;

(3) schools and educational programs for registered nurses or licensed vocational nurses; and

(4) professional associations of registered nurses or licensed vocational nurses.

Sec. 61.657. ADVISORY COMMITTEES. (a) The board shall appoint a 10-member advisory committee to advise the board concerning assistance provided under this subchapter to professional nursing students. The advisory committee consists of:

(1) a chair named by the board;

(2) one representative named by the Texas Nurses Association;

(3) one representative named by the Texas Organization of Nurse Executives;

(4) one representative named by the Board of Nurse Examiners;

(5) a head of each of the three types of professional nursing educational programs, named by the deans and directors of nursing programs in this state;

(6) a representative of graduate nursing education named by the deans and directors of nursing programs in this state;

(7) one representative named by the Texas Health Care Association; and

(8) one representative named by the Texas Association of Homes for the Aging.

(b) The board shall appoint an eight-member advisory committee to advise the board concerning assistance provided under this subchapter to vocational nursing students. The advisory committee consists of:

(1) a chair named by the board;

(2) one representative named by the Licensed Vocational Nurses Association of Texas;

(3) one representative named by the Texas Organization of Nurse Executives;

(4) one representative named by the Board of Vocational Nurse Examiners;

(5) two representatives of vocational nursing educational programs named by the Texas Association of Vocational Nurse Educators;

(6) one representative named by the Texas Health Care Association; and

(7) one representative named by the Texas Association of Homes for the Aging.

(c) The costs of participation on an advisory committee of a member representing a particular organization or agency shall be borne by that member or the organization or agency the member represents.

(d) In addition to any other duties assigned by the board, each advisory committee shall specifically advise the board on:

(1) how the scholarship, matching fund, and loan repayment programs provided for under this subchapter should be established and administered to best promote the health care and educational needs of this state;

(2) any priorities of emphasis among the scholarship, matching fund, and loan repayment programs;

(3) the amount of money needed to adequately fund the scholarship, matching fund, and loan repayment programs; and

(4) any priorities among the factors identified by Section 61.655(b) of this code.

Sec. 61.658. FUNDING. (a) In addition to funds appropriated by the legislature, the board may accept gifts, grants, and donations of real or personal property from any individual, group, association, or corporation or the United States, subject to limitations or conditions set by law, for the purposes of this subchapter.

(b) Funding for the loan repayment program, scholarship program, and matching fund program established under this subchapter includes:

(1) money collected from the temporary reregistration fee increase under Article 4525c, Revised Statutes, which may be used to assist only professional nursing students; and

(2) money collected from the license renewal fee under Section 9A, Article 4528c, Revised Statutes, which may be used to assist only vocational nursing students.

(c) This subsection and Subsection (b) of this section expire December 1, 1991.

SECTION 3. Title 71, Revised Statutes, is amended by adding Article 4525c to read as follows:

Art. 4525c. TEMPORARY REREGISTRATION FEE INCREASE

Sec. 1. COLLECTION AND USE OF TEMPORARY REREGISTRATION FEE INCREASE. (a) Each reregistration fee imposed under Article 4526, Revised Statutes, that first becomes due on or after September 1, 1989, but before September 1, 1991, is increased by $10.

(b) Each fee increase collected under this article shall be placed in the state treasury to the credit of a special fund known as the professional nursing student

financial aid and loan repayment fund to be spent by the Texas Higher Education Coordinating Board for the purpose of providing financial aid to professional nursing students and repaying educational loans of registered nurses as provided by Subchapter L, Chapter 61, Education Code, and for the payment of associated administrative costs subject to Section 2 of this article.

(c) Interest earned on amounts in the professional nursing student financial aid and loan repayment fund shall be credited to that fund.

(d) If a fee that is increased by this section covers a period extending beyond August 31, 1991, the entire amount of the increase is due regardless of the fact that part of the period extends beyond August 31, 1991.

Sec. 2. ADMINISTRATIVE COSTS; ALLOCATION OF REMAINDER OF FUNDS. (a) The administrative costs to collect and disburse the fee increases collected under this article may not exceed 25 percent of the total money collected with 20 percent to be allocated to the Texas Higher Education Coordinating Board and five percent to the Board of Nurse Examiners.

(b) The money remaining in the special fund after payment of administrative costs shall be spent to assist professional nursing students in accordance with the following guidelines:

(1) 35 percent shall be used for funding of the matching fund program established under Section 61.653, Education Code, not to exceed $1,000 for each student enrolled in an associate degree program and $1,500 for each student enrolled in a baccalaureate degree program;

(2) 15 percent shall be used for scholarships awarded under Section 61.652, Education Code, for ethnic or racial minority students, not to exceed $2,000 for each student enrolled in an associate degree program and $3,000 for each student enrolled in a baccalaureate degree program;

(3) 15 percent shall be used for scholarships awarded under Section 61.652, Education Code, for licensed vocational nurses returning to school to become licensed as registered nurses, not to exceed $1,500 for each student enrolled in an associate degree program and $2,500 for each student enrolled in a baccalaureate degree program;

(4) 10 percent shall be used for scholarships awarded under Section 61.652, Education Code, for students from rural areas attending schools or programs of professional nursing located in rural areas, not to exceed $1,500 for each student enrolled in an associate degree program and $2,500 for each student enrolled in a baccalaureate degree program; and

(5) 10 percent shall be used to fund special projects that promote or test solutions to the shortage of professional nurses in this state.

(c) The Texas Higher Education Coordinating Board shall, with the advice of the advisory committee established under Section 61.657(a), Education Code, spend the 15 percent not allocated by Subsection (b) of this section in the manner the coordinating board determines best promotes the purposes of Subchapter L, Chapter 61, Education Code, including allocating those remaining funds for the repayment of educational loans of registered nurses or for one or more of the purposes prescribed by Subdivisions (1) through (4) of Subsection (b) of this section. If the coordinating board determines that a surplus of funds exists in a category identified by Subsection (b) of this section, it may, with the advice of the advisory committee established under Section 61.657(a), Education Code, reallocate money from that category to one or more of the other categories. From funds allocated under this subsection, the coordinating board may not award an amount of money exceeding $2,000 for a student enrolled in an associate degree program and $3,000 for a student enrolled in a baccalaureate degree program.

Sec. 3. EXPIRATION. This article expires December 1, 1991.

SECTION 4. Chapter 118, Acts of the 52nd Legislature, Regular Session, 1951 (Article 4528c, Vernon's Texas Civil Statutes), is amended by adding Section 9A to read as follows:

Sec. 9A. LICENSE RENEWAL FEE INCREASE. (a) Each license renewal fee imposed under Section 9(a)(3) of this Act that first becomes due on or after September 1, 1989, but before September 1, 1991, is increased by five dollars.

(b) Each fee increase collected under this section shall be deposited in the state treasury to the credit of a special fund known as the vocational nursing student financial aid and loan repayment fund to be spent by the Texas Higher Education Coordinating Board for the purpose of providing financial aid to vocational nursing students and repaying educational loans of licensed vocational nurses as specified by Subchapter L, Chapter 61, Education Code, and for the payment of associated administrative costs subject to Subsection (d) of this section.

(c) Notwithstanding Section 404.071, Government Code, interest earned on amounts in the vocational nursing student financial aid and loan repayment fund shall be credited to that fund.

(d) If a fee that is increased by this section covers a period extending beyond August 31, 1991, the entire amount of the increase is due regardless of the fact that part of the period extends beyond August 31, 1991.

(e) The administrative costs to collect and disburse the fee increases collected under this section may not exceed 25 percent of the total money collected with 20 percent to be allocated to the Texas Higher Education Coordinating Board and five percent to the Board of Vocational Nurse Examiners.

(f) The money remaining in the special fund after payment of administrative costs shall be spent to assist vocational nursing students in accordance with the following guidelines:

(1) 50 percent shall be used for funding of the matching fund program established under Section 61.653, Education Code, not to exceed $750 for each student;

(2) 15 percent shall be used for scholarships awarded under Section 61.652, Education Code, for ethnic or racial minority students, not to exceed $1,500 for each student;

(3) 10 percent shall be used for scholarships awarded under Section 61.652, Education Code, for students from rural areas attending schools or programs of professional nursing located in rural areas, not to exceed $1,500 for each student; and

(4) 10 percent shall be used to fund special projects that promote or test solutions to the shortage of vocational nurses in this state.

(g) The Texas Higher Education Coordinating Board shall, with the advice of the advisory committee established under Section 61.657(b), Education Code, spend the 15 percent not allocated by Subsection (f) of this section in the manner the coordinating board determines best promotes the purposes of Subchapter L, Chapter 61, Education Code, including allocating those remaining funds for the repayment of educational loans of licensed vocational nurses or for one or more of the purposes prescribed by Subdivisions (1) through (4) of Subsection (f) of this section. If the coordinating board determines that a surplus of funds exists in a category identified by Subsection (f) of this section, it may, with the advice of the advisory committee established under Section 61.657(b), Education Code, reallocate money from that category to one or more of the other categories. From the funds allocated under this subsection, the coordinating board may not award an amount of money exceeding $1,500 for any student.

(h) This section expires December 1, 1991.

SECTION 5. All funds, including monies from fees, private matching funds and other sources, collected by the Board of Nurse Examiners, the Board of

Vocational Examiners, and the Texas Higher Education Coordinating Board in accordance with sections 2, 3, and 4 of this Act are hereby appropriated to the Board of Nurse Examiners, the Board of Vocational Nurse Examiners, and the Texas Higher Education Coordinating Board for purposes outlined in sections 2, 3, and 4 of this Act.

Floor Amendment No. 2 - Denton

Amend **S.B. 1351**, page 2, line 26 by adding the following after "community": ", but in no event may the performance on a standardized test be used as the sole criterion to determine selection."

The amendments were read.

Senator Carriker moved to concur in the House amendments to **S.B. 1351**.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Parker, Parmer, Washington.

SENATE BILL 698 WITH HOUSE AMENDMENTS

Senator Carriker called **S.B. 698** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment - Counts

Amend **S.B. 698** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Section 3, Article 9201, Revised Statutes, is amended to read as follows:

Sec. 3 (a) The Texas Water Commission shall have concurrent jurisdiction with the State Board of Insurance on inspection of initial installation and other administrative supervision of aboveground tanks authorized and regulated by this Chapter. Primary authority for inspection of initial installation of such tanks shall be in the Water Commission. The Water Commission shall report all violations of this Chapter in regard to aboveground storage tanks to the State Fire Marshal for enforcement proceedings.

[~~Sec. 3~~] (b) The state fire marshal, county fire marshals, and city fire marshals shall enforce the provisions of this Act and the rules and regulations adopted by the State Board of Insurance under the supervision of the board.

SECTION 2. Section 4, Article 9201, Revised Statutes, is amended by amending Subsection (a) and adding Subsection (c)-(f) to read as follows:

(a) Except as provided by Subsections (c) and (d) of this section, flammable [~~Flammable~~] liquids shall not be stored at retail service stations in tanks of more than 60 gallons gross capacity above the surface of the ground. Underground flammable liquid tanks at retail service stations shall not be limited in individual or combined capacities or sizes.

(c) Gasoline, diesel fuel, or kerosine, may be stored in an aboveground storage tank with a capacity of not more than 2,000 gallons at a retail service station located in an unincorporated area or in a municipality with a population of fewer than 5,000 inhabitants according to the most recent federal decennial census if the retail service station is located more than five miles from the limits of a municipality with a population of 15,000 or more inhabitants according to the most recent federal decennial census. The service station may have a tank of that capacity for each

separate grade of gasoline, diesel fuel, or kerosine, but may not have more than one tank of that capacity for the same grade.

(d) In adopting rules under Section 2 of this Act, the board shall include rules concerning the design, construction, and installation of tanks permitted to be used under Subsections (c) and (d) of this section. The rules adopted by the board may not be more stringent than the standards of the National Fire Protection Association.

(f) The authority of a retail service station to store flammable liquids in an aboveground storage tank as provided by Subsections (c) and (d) of this section is not affected by a change in the boundaries or population of a municipality that occurs after the retail service station begins operation.

Floor Amendment - Holzheauser

Amend **C.S.S.B. 698** as follows:

On page 2, line 7, strike "2,000" and substitute "3,000".

Floor Amendment on Third Reading - Horn

Amend **C.S.S.B. 698** by striking lines 6 thru 27, on page 2, and lines 1 thru 10 on page 3 and substituting the following:

(c) Gasoline, diesel fuel, aviation fuel, or kerosine, may be stored in an aboveground storage tank with a capacity of not more than 3,000 gallons at a retail service station or aircraft fueling facility located in an unincorporated area or in a municipality with a population of fewer than 5,000 inhabitants according to the most recent federal decennial census if the retail service station or aircraft fueling facility is located more than five miles from the limits of a municipality with a population of 15,000 or more inhabitants according to the most recent federal decennial census. The service station or aircraft fueling facility may have a tank of that capacity for each separate grade of gasoline, diesel fuel, aviation fuel, or kerosine, but may not have more than one tank of that capacity for the same grade.

(d) Gasoline, diesel fuel, aviation fuel or kerosine, may be stored in an aboveground storage tank with a capacity of not more than 4,000 gallons at a retail service station or aircraft fueling facility located in an unincorporated area not closer than 10 miles to a municipality with a population of more than 15,000 inhabitants according to the most recent federal decennial census. The service station or aircraft fueling facility may have a tank of that capacity for each separate grade of gasoline, diesel fuel, aviation fuel, or kerosine, but may not have more than one tank of that capacity for the same grade.

(e) In adopting rules under Section 2 of this Act, the board shall include rules concerning the design, construction, and installation of tanks permitted to be used under Subsections (c) and (d) of this section. The rules adopted by the board may not be more stringent than the standards of the National Fire Protection Association.

(f) The authority of a retail service station or aircraft fueling facility to store flammable liquids in an aboveground storage tank as provided by Subsections (c) and (d) of this section is not affected by a change in the boundaries or population of a municipality that occurs after the retail service station or aircraft fueling facility begins operation.

The amendments were read.

Senator Carriker moved to concur in the House amendments to **S.B. 698**.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Parker, Parmer, Washington.

SENATE BILL 482 WITH HOUSE AMENDMENTS

Senator Carriker called **S.B. 482** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment - Robnett

Amend **S.B. 482** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Chapter 101, Human Resources Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. OPTIONS FOR INDEPENDENT LIVING

Sec. 101.041. DEFINITIONS. In this subchapter:

(1) "Case management" means the process of assessing service needs, developing a plan of care, and arranging for and monitoring delivery of care to an elderly person under this subchapter.

(2) "Case management unit" is an entity that coordinates and administers case management.

(3) "Elderly person" means a person who is 60 years of age or older.

(4) "Service area" means a geographical area of the state designated for purposes of planning, development, and overall administration of services provided under this subchapter.

Sec. 101.042. OPTIONS FOR INDEPENDENT LIVING. (a) The department shall establish a statewide program entitled Options for Independent Living to help elderly persons remain at home despite limited self-care capacities.

(b) The Options for Independent Living program shall provide short-term support services to elderly persons for the purposes of:

(1) restoring functional capacities after illness or hospitalization; and

(2) educating and preparing elderly persons and their caregivers to provide self-care.

Sec. 101.043. ELIGIBILITY. (a) The department by rule shall prescribe eligibility criteria for the program.

(b) The rules must provide that an elderly person whose income or resources disqualify the person for entitlement programs but are inadequate to pay for needed support services is eligible for services under the program.

(c) The program shall give priority to an elderly person who:

(1) has recently suffered a major illness or health care crisis or has recently been hospitalized;

(2) lives in a rural area;

(3) has insufficient caregiver support; and

(4) has a mild to moderate impairment or a temporary severe impairment.

Sec. 101.044. PROVISION OF SERVICES. (a) Support services shall include:

(1) case management;

(2) homemaking assistance, including personal care;

(3) residential repair;

(4) benefits counseling;

(5) respite care;

(6) emergency response;

(7) education and training for caregivers;

(8) home-delivered meals; and

(9) transportation.

(b) A case manager shall conduct an individual assessment of an elderly person's needs and shall, in consultation with the elderly person and the elderly person's family, create a plan of care that specifies the type, amount, frequency, and duration of support services the elderly person needs.

(c) A plan of care must coordinate the available public and private services and resources that are most appropriate to meet the elderly person's needs.

(d) An area agency on aging may not directly provide homemaker, home health, residential repair, respite, meal delivery, or transportation service unless the area agency receives no response to a request for proposals that meets department standards.

(e) An area agency on aging that wants to provide directly a service not available through a local public or private entity must obtain approval from the department in accordance with department rules governing the granting of such approval.

Sec. 101.045. CASE MANAGEMENT UNITS. (a) The department shall designate one or more case management units for each service area to provide case management services according to department rules and standards.

(b) The department shall designate an area agency on aging as a case management unit for a service area. The area agency on aging may act as the case management unit or may subcontract with a local service agency or hospital to act as the case management unit.

(c) The department may contract with another public or private entity to act as a case management unit for a service area if the area agency on aging cannot provide or subcontract for case management services.

(d) A case manager must be an employee of a case management unit.

(e) The department shall periodically review a case management unit.

Sec. 101.046. ADMINISTRATION OF PROGRAM. (a) The department, with the advice of an advisory committee, shall administer the program through grants to area agencies on aging.

(b) Area agencies on aging shall maintain their service provision levels in effect on September 1, 1989, independent of the Options for Independent Living program. Funds made available under this program may not be used to supplant service funds for services provided on September 1, 1989.

(c) An area agency on aging that receives funds under this section shall ensure the availability of the services for which the funds were granted.

Sec. 101.047. ADVISORY COMMITTEE. (a) The department shall appoint a statewide advisory committee that includes hospital discharge planners, hospital administrators, nurses, and physicians to advise the department in administering the program. The department shall appoint as many members as the department considers necessary to assist the department in performing its duties.

(b) The advisory committee shall elect its own presiding officer and shall meet and serve according to department rules.

(c) A member of an advisory committee receives no compensation but is entitled to reimbursement for transportation and the per diem allowance for state employees in accordance with the General Appropriations Act.

Sec. 101.048. FEES. (a) The department by rule shall establish a copayment system using a sliding scale that is based on an elderly person's income.

(b) An elderly person whose income exceeds the basic income and resources requirements for eligibility for the medical assistance program under Chapter 32, Human Resources Code, but whose income is less than 250 percent of the federal poverty level based on the federal Office of Management and Budget poverty index shall pay a portion of the cost of support services provided to the person by a case management unit according to the fee scale.

(c) An elderly person whose income exceeds 250 percent of the federal poverty level shall pay the full cost of support services provided by a case management unit.

(d) A local case management unit shall collect and account for all fees imposed for services provided by the case management unit and shall submit reports to the department as prescribed by department rules.

(e) Fees collected shall be used to defray program costs and to expand the program.

Sec. 101.049. DEPARTMENT REPORTS. The department shall submit periodic reports on the program to the governor and the legislature.

SECTION 2. Not later than February 1, 1990, each area agency on aging shall submit to the department for approval a plan of operation either to provide and supervise or to subcontract for at least one case management unit. Not later than the 30th day after the date on which the department receives a plan, the department shall notify the area agency on aging of its acceptance or rejection of the plan. If a plan is rejected, the department shall give its reasons for rejection and the area agency on aging shall submit a revised plan. If the area agency on aging does not submit a revised plan on or before the 30th day after the agency receives notice of denial of its original plan, the department may contract with another public or private entity to serve that service area.

SECTION 3. This Act takes effect September 1, 1989.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Amendment - Vowell

Amend **C.S.S.B. 482** as follows:

(1) On page 3, strike line 27 and substitute the following: "aging may act as the case management unit, after obtaining approval from the department in accordance with department rules governing the granting of such approval, or the area agency on aging may subcontract with a".

(2) On page 4, line 24, between "administrators," and "nurses," insert "home health agency representatives,".

The amendments were read.

On motion of Senator Carriker and by unanimous consent, the Senate concurred in the House amendments to **S.B. 482** viva voce vote.

STATEMENT RELATING TO HOUSE AMENDMENTS TO SENATE BILL 482

House amendments to **S.B. 482** specify that, in regard to the Options for Independent Living Program funds, an Area Agency on Aging which wishes to provide these services directly must first issue a request for proposals and ensure that no other provider meeting department standards can deliver adequate services; Department approval is also required before Area Agencies may directly provide case management.

CARRIKER

SENATE BILL 419 WITH HOUSE AMENDMENT

Senator Carriker called **S.B. 419** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Floor Amendment - Beauchamp

Amend **S.B. 419** by inserting the following and appropriately numbering the sections:

SECTION . Subsection (a), Section 32.015, Government Code, is amended to read as follows:

(a) The Commissioners Court of Bexar County shall budget for and pay the judges of the district courts having jurisdiction in that county an annual salary [~~of $12,000~~] for services rendered and for performing administrative services.

The amendment was read.

Senator Carriker moved to concur in the House amendment to **S.B. 419**.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Parker, Parmer, Washington.

SENATE BILL 1321 WITH HOUSE AMENDMENTS

Senator Dickson called **S.B. 1321** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment - Fraser

Amend **S.B. 1321** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Section 53.021, Property Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) A person[~~, including a lumber dealer, artisan, laborer, mechanic, or subcontractor,~~] has a lien if:

(1) the person labors, specially fabricates material, or furnishes labor or materials for construction or repair in this state of:

(A) a house, building, or improvement;

(B) a levee or embankment to be erected for the reclamation of overflow land along a river or creek; or

(C) a railroad; and

(2) the person labors, specially fabricates the material, or furnishes the labor or materials under or by virtue of a contract with the owner or the owner's agent, trustee, receiver, contractor, or subcontractor.

(c) An architect, engineer, or surveyor who prepares a plan or plat in connection with the proposed construction or repair of improvements on real property has a lien on the property if:

(1) the architect, engineer, or surveyor prepares the plan or plat pursuant to a written contract, in recordable form, that contains a legal description of the real property on which the construction is to be performed; and

(2) the contract is recorded with the county clerk of the county in which the property is located before the date construction is commenced.

(d) A lien created by Subsection (c) takes effect on the date construction is commenced. Neither the filing of the contract described by Subsection (c) nor performance of work under that contract is considered to establish the time of inception of any lien under Section 53.124.

SECTION 2. Section 53.025, Property Code, is amended to read as follows:

Sec. 53.025. LIMITATION ON ORDINARY RETAINAGE LIEN. A lien for retainage is valid only for the amount specified to be retained in the contract,

including any amendments to the contract, between the claimant and the original contractor or between the claimant and a subcontractor.

SECTION 3. Section 53.026, Property Code, is amended to read as follows:

Sec. 53.026. SHAM CONTRACT[~~; PENALTY FOR CERTAIN FALSE STATEMENTS~~]. (a) A person who labors, specially fabricates materials, or furnishes labor or materials under a direct contractual relationship with another person [~~a corporation or individual, as applicable,~~] is considered to be in direct contractual relationship with the owner and has a lien as an original contractor, if:

(1) the owner contracted with the other person [~~corporation~~] for the construction or repair of a house, building, or improvements and the owner can effectively control that person [~~the corporation~~] through ownership of voting stock, interlocking directorships, or otherwise; or

(2) the owner contracted with the other person [~~corporation or individual~~] for the construction or repair of a house, building, or improvements and the contract was made without good faith intention of the parties that the other person [~~individual or corporation~~] was to perform the contract.

(b) [~~A person commits an offense if, for the purpose of procuring money or any other thing of value in connection with the construction or repair:~~

[~~(1) the person knowingly and with intent to defraud makes or causes to be made a false written statement to the effect that a bill, charge, account, or claim for labor performed or for material or specially fabricated material furnished for the construction or repair of a house, building, or improvement has been paid or satisfied in full or in part; and~~

[~~(2) the person is:~~

[~~(A) the owner of the real property or the owner's agent;~~

[~~(B) an agent, director, officer, or employee of a corporation, firm, or association that is owner of the real property;~~

[~~(C) an agent, director, officer, or employee of a corporation that is in direct contractual relationship with the owner of the real property and that the owner of the real property can effectively control through the ownership of voting stock, interlocking directorship, or otherwise; or~~

[~~(D) in direct contractual relationship with the owner of the real property or is an agent, director, officer, or employee of a corporation that is in direct contractual relationship with the owner, and the contract was entered into without good faith or without intent that the contract was to be performed by the person or corporation.~~

[~~(c) An offense under Subsection (b) is a misdemeanor punishable by:~~

[~~(1) a fine of not less than $100 nor more than $5,000;~~

[~~(2) confinement in county jail for not more than one year; or~~

[~~(3) both the fine and the confinement.~~

[~~(d)~~] In this section, "owner" does not include a person who has or claims a security interest only.

SECTION 4. Section 53.052, Property Code, is amended to read as follows:

Sec. 53.052. FILING OF AFFIDAVIT. (a) The person claiming the lien must file an affidavit with the county clerk of the county in which the property is located or into which the railroad extends[~~:~~

[~~(b) An original contractor must file the affidavit~~] not later than the 15th [~~120th~~] day of the fourth calendar month after the day on which the indebtedness accrues.

(b) [~~(c) A lumber dealer, artisan, laborer, mechanic, subcontractor, or other person who is not an original contractor must file the affidavit not later than the 90th day after the day on which the indebtedness accrues.~~

[~~(d)~~] The county clerk shall record the affidavit in records kept for that purpose and shall index and cross-index the affidavit in the names of the claimant,

the original contractor, and the owner. Failure of the county clerk to properly record or index a filed affidavit does not invalidate the lien.

SECTION 5. Section 53.053, Property Code, is amended to read as follows:

Sec. 53.053. ACCRUAL OF INDEBTEDNESS. (a) For purposes of Section 53.052, indebtedness accrues on a contract under which labor was performed, materials furnished, or specially fabricated materials are [~~material is~~] to be furnished in accordance with this section.

(b) Indebtedness to an original contractor accrues:

(1) on the last day of the month in which a written declaration by the original contractor or the owner is received by the other party to the original contract stating that the original contract has been terminated [~~immediately on any material breach or termination of the original contract by the owner~~]; or

(2) on the last [~~10th~~] day of the month [~~following the month~~] in which the original contract has been completed, finally settled, or abandoned.

(c) [~~Indebtedness to an artisan, laborer, or mechanic who has labored at an hourly, daily, or weekly rate of pay for an original contractor or a subcontractor accrues at the end of the calendar week during which the labor was performed.~~

[~~(d)~~] Indebtedness to a subcontractor, or to any person not covered by Subsection (b)[~~, (c),~~] or (d) [~~(c)~~], who has furnished labor or material to an original contractor or to another subcontractor accrues on the last [~~10th~~] day of the [~~month following the~~] last month in which the labor was performed or the material furnished.

(d) [~~(c)~~] Indebtedness for specially fabricated material accrues:

(1) on the last [~~10th~~] day of the [~~month following the~~] last month in which materials were delivered;

(2) on the last [~~10th~~] day of the [~~month following the~~] last month in which delivery of the last of the material would normally have been required at the job site; or

(3) on the last day of the month of [~~immediately on~~] any material breach or termination of the original contract by the owner or contractor or of the subcontract under which the specially fabricated material was furnished.

(e) [~~(f)~~] A claim for retainage accrues on the last [~~10th~~] day of the month [~~following the month~~] in which all work called for by the contract between the owner and the original contractor has been completed, finally settled, or abandoned.

SECTION 6. Subsection (a), Section 53.054, Property Code, is amended to read as follows:

(a) The affidavit must be signed by the person claiming the lien or by another person on the claimant's behalf and must contain substantially:

(1) a sworn statement of the claim, including the amount;

(2) the name of the owner or reputed owner[~~, if known~~];

(3) a general statement of the kind of work done and materials furnished by the claimant;

(4) the name of the person by whom the claimant was employed or to whom the claimant furnished the materials or labor;

(5) the name of the original contractor; [~~and~~]

(6) a description, legally sufficient for identification, of the property sought to be charged with the lien; and

(7) the claimant's business address.

SECTION 7. Section 53.055, Property Code, is amended to read as follows:

Sec. 53.055. NOTICE OF FILED AFFIDAVIT. A person who files an affidavit must send a copy [~~two copies~~] of the affidavit by registered or certified mail to the owner or reputed owner at the owner's last known business or residence address not later than the 10th business day after the date the person files the affidavit or after the date the affidavit is required to be filed, whichever is earlier. If

the person is not an original contractor, the person must also send a copy of the affidavit to the original contractor at the original contractor's last known business or residence address within the same period.

SECTION 8. Subsections (b), (c), (d), and (e), Section 53.056, Property Code, are amended to read as follows:

(b) If the lien claim arises from a debt incurred by a subcontractor, the claimant must give to the original contractor written notice of the unpaid balance. The claimant must give the notice not later than the 15th [~~36th~~] day [~~following the 10th day~~] of the second month following each month in which all or part of the claimant's labor was performed or material delivered. The claimant must give the same notice to the owner or reputed owner and the original contractor not later than the 15th [~~90th~~] day [~~after the 10th day~~] of the third month following each month in which all or part of the claimant's labor was performed or material or specially fabricated material was delivered.

(c) If the lien claim arises from a debt incurred by the original contractor, the claimant must give notice to the owner or reputed owner, with a copy to the original contractor, in accordance with Subsection (b) [~~but is not required to give notice to the original contractor~~].

(d) To authorize the owner to withhold funds under Subchapter D, the notice to the owner must state that if the claim [~~bill~~] remains unpaid, the owner may be personally liable and the owner's property may be subjected to a lien unless:

(1) the owner withholds payments from the contractor for payment of the claim [~~bill~~]; or

(2) the claim [~~bill~~] is otherwise paid or settled.

(e) The notice must be sent by registered or certified mail and must be addressed to the owner or reputed owner or the original contractor, as applicable, at his last known business or residence address.

SECTION 9. Subsections (b) and (d), Section 53.057, Property Code, are amended to read as follows:

(b) The claimant must give the owner or reputed owner notice of the retainage agreement not later than the 15th [~~36th~~] day [~~after the 10th day~~] of the second month following the delivery of materials or the performance of labor by the claimant that first occurs after the claimant has agreed to the contractual retainage [~~month in which the agreement is made~~]. If the agreement is with a subcontractor, the claimant must also give notice within that time to the original contractor.

(d) The notice must be sent by registered or certified mail to the last known business or residence address of the owner or reputed owner or the original contractor, as applicable.

SECTION 10. Subsections (b) and (d), Section 53.058, Property Code, are amended to read as follows:

(b) The claimant must give the owner or reputed owner notice not later than the 15th [~~36th~~] day [~~after the 10th day~~] of the second month after [~~following~~] the month in which the claimant receives and accepts the order for the material. If the indebtedness is incurred by a person other than the original contractor, the claimant must also give notice within that time to the original contractor.

(d) The notice must be sent by registered or certified mail to the last known business or residence address of the owner or the reputed owner or the original contractor, as applicable.

SECTION 11. Subsection (b), Section 53.081, Property Code, is amended to read as follows:

(b) If notice is sent in a form that substantially complies with [~~under~~] Section 53.056, the owner may withhold the funds immediately on receipt of the notice.

SECTION 12. Section 53.082, Property Code, is amended to read as follows:

Sec. 53.082. TIME FOR WHICH FUNDS ARE WITHHELD. Unless payment is made under Section 53.083 or the claim is otherwise settled, discharged, indemnified against under Subchapter H or I, or determined to be invalid by a final judgment of a court, the owner shall retain the funds withheld until:

(1) the time for filing the affidavit of [~~securing the~~] mechanic's lien has passed; or

(2) if a lien affidavit has been filed, until the lien claim has been satisfied or released.

SECTION 13. Subsection (a), Section 53.085, Property Code, is amended to read as follows:

(a) Any person who furnishes labor or materials for the construction of improvements on real property shall, if requested [~~upon request~~] and as a condition of [~~final~~] payment for such labor or materials, provide to the requesting party, or its agent, an affidavit stating that such person has paid each of his subcontractors, laborers, or materialmen in full for all labor and materials provided to him for the construction. In the event, however, that the person has not paid each of his subcontractors, laborers, or materialmen in full, the person shall state in the affidavit the amount owed and the name of each subcontractor, laborer, or materialman to whom such payment is owed.

SECTION 14. Section 53.101(a), Property Code, is amended to read as follows:

(a) During the progress of work under an original contract for which a mechanic's lien may be claimed and for 30 days after the work is completed, the owner shall retain:

(1) 10 percent of the contract price of the work to the owner; or

(2) 10 percent of the value of the work, measured by the proportion that the work done bears to the work to be done, using the contract price or, if there is no contract price, using the reasonable value of the completed work.

SECTION 15. Section 53.104, Property Code, is amended to read as follows:

Sec. 53.104. PREFERENCES. (a) Individual artisans [~~Artisans~~] and mechanics are entitled to a preference to the retained funds and shall share proportionately to the extent of their claims for wages and fringe benefits earned.

(b) After payment of artisans and mechanics who are entitled to a preference under Subsection (a), other participating claimants share proportionately in the balance of the retained funds.

SECTION 16. Section 53.105(a), Property Code, as amended by Senate Bill 221, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(a) If the owner fails or refuses to comply with this subchapter, the claimants complying with this chapter have a lien, at least to the extent of the amount that should have been retained from the original contract under which they are claiming, against the house, building, structure, fixture, or improvement and all of its properties and against the lot or lots of land necessarily connected.

SECTION 17. Subchapter E, Chapter 53, Property Code, is amended by adding Section 53.106 to read as follows:

Sec. 53.106. AFFIDAVIT OF COMPLETION. (a) An owner may file with the county clerk of the county in which the property is located an affidavit of completion. The affidavit must contain:

(1) the name and address of the owner;

(2) the name and address of the original contractor;

(3) a description, legally sufficient for identification, of the real property on which the improvements are located;

(4) a description of the improvements furnished under the original contract;

(5) a statement that the improvements under the original contract have been completed and the date of completion; and

(6) a conspicuous statement that a claimant may not have a lien on retained funds unless the claimant files the affidavit claiming a lien not later than the 30th day after the date of completion.

(b) A copy of the affidavit must be sent by certified or registered mail to the original contractor not later than the 10th day after the date the affidavit is filed and to each claimant who sends a notice of lien liability to the owner under Section 53.056, 53.057, or 53.058 not later than the 10th day after the date the owner receives the notice of lien liability or after the date the affidavit is filed, whichever is later.

(c) A copy of the affidavit must also be sent to each person who furnishes labor or materials for the property and who furnishes the owner with a written request for the copy. The owner must furnish the copy to the person not later than the 10th day after the date the request is received or after the date the affidavit is filed, whichever is later.

(d) An affidavit filed under this section on or before the 10th day after the date of completion of the improvements is prima facie evidence of the date the work under the original contract is completed for purposes of this subchapter. If the affidavit is filed after the 10th day after the date of completion, the date of completion for purposes of this subchapter is the date the affidavit is filed.

(e) In this subchapter, "completion" of an original contract means the actual completion of the work, including any extras or change orders reasonably required or contemplated under the original contract, other than warranty or repair work.

SECTION 18. Section 53.124, Property Code, is amended to read as follows:

Sec. 53.124. INCEPTION OF MECHANIC'S LIEN. (a) For purposes of Section 53.123, the time of inception of a mechanic's lien is the [~~earlier of~~:

[~~(1)~~)] commencement of construction of improvements or delivery of materials to the land on which the improvements are to be located and on which the materials are to be used[~~; or~~

[~~(2) recording of a written agreement, or if the agreement is oral, an affidavit stating that the lien claimant has entered into an agreement with the owner or the owner's contractor or subcontractor, to construct all or part of any improvements or to perform labor, furnish material, or provide specially fabricated material in connection with the construction~~].

(b) The construction or materials under [~~Subdivision (1) of~~] Subsection (a) must be visible from inspection of the land on which the improvements are being made.

(c) An owner and original contractor may jointly file an affidavit of commencement with the county clerk of the county in which the land is located not later than the 30th day after the date of actual commencement of construction of the improvements or delivery of materials to the land. The affidavit must contain:

(1) the name and address of the owner;

(2) the name and address of each original contractor, known at the time to the owner, that is furnishing labor, service, or materials for the construction of the improvements;

(3) a description, legally sufficient for identification, of the property being improved;

(4) the date the work actually commenced; and

(5) a general description of the improvement [~~The contract or affidavit under Subdivision (2) of Subsection (a) must be recorded in the mechanic's lien records of the county in which the land is located~~].

(d) An affidavit filed in compliance with this section is prima facie evidence of the date of the commencement of the improvement described in the affidavit. The

time of inception of a mechanic's lien arising from work described in an affidavit of commencement is the date of commencement of the work stated in the affidavit [~~The affidavit under Subdivision (2) of Subsection (a) must contain:~~

[~~(1) a description of the land;~~

[~~(2) the name and address of the lien claimant;~~

[~~(3) the name and address of the person with whom the lien claimant has contracted for the improvements, labor, materials, or specially fabricated materials; and~~

[~~(4) a general description of the improvements for which the parties contracted~~].

SECTION 19. Section 53.151, Property Code, is amended to read as follows:

Sec. 53.151. ENFORCEMENT [~~RELINQUISHMENT FOLLOWING CONTRACT COMPLIANCE; GARNISHMENT~~] OF REMEDIES AGAINST MONEY DUE ORIGINAL CONTRACTOR OR SUBCONTRACTOR. (a) [~~When the debt is paid under the contract for construction, the party for whose interest the contract was recorded shall enter a relinquishment showing full compliance with the contract to the extent of all money due the party from the original contractor on account of labor done or material furnished.~~

[~~(b)~~] A creditor of an original contractor may not collect, enforce a security interest against, garnish, or levy execution on the money due the original contractor or the contractor's surety from the owner, and a creditor of a subcontractor may not collect, enforce a security interest against, garnish, or levy execution on the money due the subcontractor, to the prejudice of the subcontractors, mechanics, laborers, [~~or~~] materialmen, or their sureties.

(b) A surety issuing a payment bond or performance bond in connection with the improvements has a priority claim over other creditors of its principal to contract funds to the extent of any loss it suffers or incurs. That priority does not excuse the surety from paying any obligations that it may have under its payment bonds.

SECTION 20. Section 53.152, Property Code, is amended to read as follows:

Sec. 53.152. [~~RECORDING OF LIEN~~] RELEASE OF CLAIM OR LIEN. (a) When a debt for labor or materials is satisfied or paid by collected funds, the person who furnished the labor or materials shall, not later than the 10th day after the date of receipt of a written request, furnish to the requesting person a release of the indebtedness and any lien claimed, to the extent of the indebtedness paid. An owner, the original contractor, or any person making the payment may request the release.

(b) A release of lien must be in a form that would permit it to be filed of record [~~The claimant of a recorded mechanic's lien shall record a relinquishment and satisfaction of the lien when the lien is paid or satisfied or when the claimant receives the proper lienable parts for which the owner is liable under this chapter~~].

SECTION 21. Section 53.156, Property Code, is amended to read as follows:

Sec. 53.156. COSTS AND ATTORNEY'S FEES [~~OF COLLECTION OR DEFENSE~~]. In any proceeding to foreclose a lien or to enforce a claim against a bond issued under Subchapter H, I, or J or in any proceeding to declare that any lien or claim is invalid or unenforceable in whole or in part, the court may award costs and reasonable attorney's fees as are equitable and just [~~(a) If the lien provided under Section 53.021 is not paid before the 181st day after the day the lien is fixed and secured under this chapter, the claimant or owner of the lien is entitled to recover all reasonable costs of collection, including attorney's fees.~~

[~~(b) If a claim for a lien provided under Section 53.021 is not valid or enforceable because of the failure to fix and secure the lien under this chapter or for any other reason, the owner, original contractor, subcontractor, or any surety under a bond is entitled to recover from the claimant all reasonable costs of defending against the lien claim, including attorney's fees~~].

SECTION 22. Subchapter G, Chapter 53, Property Code, is amended by adding Sections 53.157, 53.158, and 53.159 to read as follows:

Sec. 53.157. DISCHARGE OF LIEN. A mechanic's lien or affidavit claiming a mechanic's lien filed under Section 53.052 may be discharged of record by:

(1) recording a lien release signed by the claimant under Section 53.152;

(2) failing to institute suit to foreclose the lien in the county in which the property is located within the period prescribed by Section 53.158, 53.175, or 53.208;

(3) recording the original or certified copy of a final judgment or decree of a court of competent jurisdiction providing for the discharge;

(4) filing the bond, notice, and return in compliance with Subchapter H; or

(5) filing the bond in compliance with Subchapter I.

Sec. 53.158. PERIOD FOR BRINGING SUIT TO FORECLOSE LIEN. Suit must be brought to foreclose the lien within two years after the date of filing the lien affidavit under Section 53.052.

Sec. 53.159. OBLIGATION TO FURNISH INFORMATION. (a) An owner, on written request, shall furnish the following information within a reasonable time, but not later than the 10th day after the date the request is received, to any person furnishing labor or materials for the project:

(1) a description of the real property being improved legally sufficient to identify it;

(2) whether there is a surety bond and if so, the name and last known address of the surety and a copy of the bond; and

(3) whether there are any prior recorded liens or security interests on the real property being improved and if so, the name and address of the person having the lien or security interest.

(b) An original contractor, on written request by a person who furnished work under the original contract, shall furnish to the person the following information within a reasonable time, but not later than the 10th day after the date the request is received:

(1) the name and last known address of the person to whom the original contractor furnished labor or materials for the construction project; and

(2) whether the original contractor has furnished or has been furnished a payment bond for any of the work on the construction project and if so, the name and last known address of the surety and a copy of the bond.

(c) A subcontractor, on written request by an owner of the property being improved, the original contractor, a surety on a bond covering the original contract, or any person furnishing work under the subcontract, shall furnish to the person the following information within a reasonable time, but not later than the 10th day after the date the request is received:

(1) the name and last known address of each person from whom the subcontractor purchased labor or materials for the construction project, other than those materials that were furnished to the project from the subcontractor's inventory;

(2) the name and last known address of each person to whom the subcontractor furnished labor or materials for the construction project; and

(3) whether the subcontractor has furnished or has been furnished a payment bond for any of the work on the construction project and if so, the name and last known address of the surety and a copy of the bond.

(d) Not later than the 30th day after the date a written request is received from the owner, contractor under whom a claim of lien or under whom a bond is made, or a surety on a bond on which a claim is made, a claimant for a lien or under a

bond shall furnish to the requesting person a copy of any applicable written agreement, purchase order, or contract and any billing, statement, or payment request of the claimant reflecting the amount claimed and the work performed by the claimant for which the claim is made. If requested, the claimant shall provide the estimated amount due for each calendar month in which the claimant has performed labor or furnished materials.

(e) If a person from whom information is requested does not have a direct contractual relationship on the project with the person requesting the information, the person from whom information is requested, other than a claimant requested to furnish information under Subsection (d), may require payment of the actual costs, not to exceed $25, in furnishing the requested information.

(f) A person, other than a claimant requested to furnish information under Subsection (d), who fails to furnish information as required by this section is liable to the requesting person for that person's reasonable and necessary costs incurred in procuring the requested information.

SECTION 23. Subsection (a), Section 53.171, Property Code, is amended to read as follows:

(a) If a lien, other than a lien granted by the owner in a written contract, is fixed or is attempted to be fixed by a recorded instrument under this chapter, any person [~~the owner or the contractor or subcontractor through whom the lien is claimed~~] may file a bond to indemnify against the lien.

SECTION 24. Section 53.172, Property Code, is amended to read as follows:

Sec. 53.172. BOND REQUIREMENTS. The bond must:

(1) describe the property on which the liens are claimed;

(2) refer to each lien claimed in a manner sufficient to identify it;

(3) be in an amount that is double the amount of the liens referred to in the bond unless the total amount claimed in the liens exceeds $40,000, in which case the bond must be in an amount that is the greater of 1-1/2 times the amount of the liens or the sum of $40,000 and the amount of the liens;

(4) be payable to the parties claiming the liens;

(5) be executed by:

(A) the party filing the bond as principal; and

(B) a corporate surety authorized and admitted to do business under the law in [~~of~~] this state and licensed by this state to execute the bond as surety; and

(6) be conditioned substantially that the principal and sureties will pay to the named obligees or to their assignees the amount that the named obligees would have been entitled to recover if their [~~of the liens claimed, plus costs, if the~~] claims had been [~~are~~] proved to be valid and enforceable liens on the property.

SECTION 25. Subsection (c), Section 53.173, Property Code, is amended to read as follows:

(c) The notice may be served on each obligee by having a copy delivered to the obligee by any means authorized for the service of an original petition under the Texas Rules of Civil Procedure [~~person competent to make oath of the delivery~~].

SECTION 26. Section 53.174, Property Code, is amended to read as follows:

Sec. 53.174. RECORDING OF BOND AND NOTICE. (a) The county clerk shall record the bond, notice, and return in the real property [~~mechanic's lien~~] records.

(b) In acquiring an interest in or insuring title to real property, a purchaser, insurer of title, or lender may rely on and is absolutely protected by the record of the bond, notice, and return to the same extent as if the lien claimant had filed a release of lien in the real property records.

SECTION 27. Subsection (a), Section 53.175, Property Code, is amended to read as follows:

(a) A party making or holding a lien claim may [~~sue on the bond after the 30th day following the date on which the notice is served, but may~~] not sue on the bond later than one year after the date on which the notice is served or after the date on which the underlying lien claim becomes unenforceable under Section 53.158.

SECTION 28. Section 53.202, Property Code, is amended to read as follows:

Sec. 53.202. BOND REQUIREMENTS. The bond must:

(1) be in a penal sum at least equal to the total of the original contract amount;

(2) be in favor of the owner;

(3) have the written approval of the owner endorsed on it;

(4) be executed by:

(A) the original contractor as principal; and

(B) a corporate surety authorized and admitted to do business in this state and licensed by this state to execute bonds as surety; and

(5) be conditioned on prompt payment for all labor, subcontracts, materials, specially fabricated materials, and normal and usual extras not exceeding 15 percent of the contract price.

SECTION 29. Subsection (a), Section 53.203, Property Code, is amended to read as follows:

(a) The bond and the contract between the original contractor and the owner shall be filed with the county clerk of the county in which is located all or part of the owner's property on which the construction or repair is being performed or is to be performed. A memorandum of the contract or a copy of the contract may be substituted for the original.

SECTION 30. Section 53.204, Property Code, is amended to read as follows:

Sec. 53.204. RELIANCE ON RECORD. A purchaser, lender, or other person acquiring an interest in the owner's property or an insurer of title is entitled to rely on the record of the bond and contract as constituting payment of all claims and liens for labor, subcontracts, materials, or specially fabricated materials incurred by the original contractor as if the purchaser, lender, or other person acquiring an interest in the owner's property or an insurer of title [~~he~~] were the owner who approved, accepted, and endorsed the bond and as if each person furnishing labor or materials for the work performed under the original contract, other than the original contractor, had filed a complete release and relinquishment of lien of record.

SECTION 31. Subsection (b), Section 53.206, Property Code, is amended to read as follows:

(b) To perfect a claim under this section, a person is not required to:

(1) give notice to the surety under Section 53.057, unless the claimant has a direct contractual relationship with the original contractor and the agreed retainage is in excess of 10 percent of the contract;

(2) give notice to the surety under Subsection (b) of Section 53.058; or

(3) file any affidavit [~~claim~~] with the county clerk [~~or accompany any claim or notice with an affidavit~~].

SECTION 32. Subsections (c) and (d), Section 53.208, Property Code, are amended to read as follows:

(c) The suit must be brought in the county in which the property being improved is located [~~bond was recorded~~].

(d) If the bond is recorded at the time the lien is filed, the [~~The~~] claimant must sue on the bond within one year [~~14 months~~] following perfection of his claim. If the bond is not recorded at the time the lien is filed, the claimant must sue on the bond within two years following perfection of his claim.

SECTION 33. Section 53.211, Property Code, is amended to read as follows:

Sec. 53.211. ATTEMPTED COMPLIANCE. (a) A bond shall be construed to comply with this subchapter, and the rights and remedies on the bond are enforceable in the same manner as on other bonds under this subchapter, if the bond:

(1) is furnished and filed in attempted compliance with this subchapter; or

(2) evidences by its terms intent to comply with this subchapter.

(b) Any provision in any payment bond furnished or filed in attempted compliance with this subchapter that expands or restricts the rights or liabilities provided under this chapter shall be disregarded and the provisions of this subchapter shall be read into that bond.

SECTION 34. Subsection (a), Section 53.233, Property Code, is amended to read as follows:

(a) Whether based on written or oral agreement, the notice must contain:

(1) the amount claimed;

(2) the name of the party to whom the materials were delivered or for whom the labor was performed;

(3) the dates and place of delivery or performance;

(4) a description reasonably sufficient to identify the materials delivered or labor performed and the amount due; [~~and~~]

(5) a description reasonably sufficient to identify the project for which the material was delivered or the labor performed; and

(6) the claimant's business address.

SECTION 35. Section 53.234, Property Code, is amended to read as follows:

Sec. 53.234. TIME FOR NOTICE. The lien claimant must give notice before any payment is made to the contractor and not later than the 15th [~~30th~~] day [~~after the 10th~~] of the second month following the month in which the labor was performed or the material furnished.

SECTION 36. Section 53.237, Property Code, is amended to read as follows:

Sec. 53.237. BOND REQUIREMENTS. The bond must be:

(1) in an amount double the amount of the claims filed;

(2) payable to the claimants;

(3) executed by:

(A) the party filing the bond as principal; and

(B) a corporate surety authorized, admitted to do business, and licensed by the law of this state to execute the bond as surety; and

(4) conditioned that:

(A) the principal and surety will pay to the obligees named or to their assignees the amount of the claims or the portions of the claims proved to be liens under this subchapter; and

(B) the principal and surety will pay all court costs adjudged against the principal in actions brought by a claimant on the bond.

SECTION 37. Article 5160, Revised Statutes, is amended by amending Sections A, B, E, and G, and by adding Sections H and I to read as follows:

A. Any person or persons, firm, or corporation, hereinafter referred to as "prime contractor," entering into a formal contract in excess of $25,000 with this State, any department, board or agency thereof; or any county of this State, department, board or agency thereof; or any municipality of this State, department, board or agency thereof; or any school district in this State, common or independent, or subdivision thereof; or any other governmental or quasi-governmental authority, whether specifically named herein or not, authorized under any law of this State, general or local, to enter into contractual agreements for the construction, alteration or repair of any public building or the prosecution

or completion of any public work, shall be required before commencing such work to execute to the aforementioned governmental authority or authorities, as the case may be, the statutory bonds as hereinafter prescribed, but no governmental authority may require a bond if the contract does not exceed the sum of $25,000. Each such bond shall be executed by a corporate surety or corporate sureties duly authorized and admitted to do business in this State and licensed by this State to issue surety bonds. In the case of contracts of the State or a department, board, or agency thereof, the aforesaid bonds shall be payable to the State and shall be approved by the Attorney General as to form. In case of all other contracts subject to this Act, the bonds shall be payable to the governmental awarding authority concerned, and shall be approved by it as to form. Any bond furnished by any prime contractor in an attempted compliance with this Act shall be treated and construed as in conformity with the requirements of this Act as to rights created, limitations thereon, and remedies provided. Any provision in any bond furnished by a prime contractor in attempted compliance with this Act that expands or restricts the rights or liabilities provided under this Act shall be disregarded and the provisions of this Act shall be read into that bond.

(a) A Performance Bond in the amount of the contract conditioned upon the faithful performance of the work in accordance with the plans, specifications, and contract documents. Said bond shall be solely for the protection of the State or the governmental authority awarding the contract, as the case may be.

(b) A Payment Bond, in the amount of the contract, solely for the protection of all claimants supplying labor and material as hereinafter defined, in the prosecution of the work provided for in said contract, for the use of each such claimant.

If the contracting authority fails to obtain from the prime contractor a valid payment bond as required by this section, a claimant is entitled to a lien on funds due the prime contractor in the same manner and to the same extent as if the contract were subject to Subchapter J, Chapter 53, Property Code.

B. Every claimant who has furnished labor or material in the prosecution of the work provided for in such contract in which a Payment Bond is furnished as required hereinabove, and who has not been paid in full therefor, shall have the right, if his claim remains unpaid after the expiration of sixty (60) days after the filing of the claim as herein required, to sue the principal and the surety or sureties on the Payment Bond jointly or severally for the amount due on the balance thereof unpaid at the time of filing the claim or of the institution of the suit plus reasonable attorneys' fees; provided:

(a) Notices Required for Unpaid Bills, other than notices solely for Retainages as hereinafter described.

Such claimant shall have given on or before the 15th day [~~within ninety (90) days after the 10th day~~] of the third month next following each month in which the labor was done or performed, in whole or in part, or material was delivered, in whole or in part, for which such claim is made, written notices of the claim by certified or registered mail, addressed to the prime contractor at his last known business address, or at his residence, and to the surety or sureties. Such notices shall be accompanied by a sworn statement of account stating in substance that the amount claimed is just and correct and that all just and lawful offsets, payments, and credits known to the affiant have been allowed. Such statement of account shall include therein the amount of any retainage or retainages applicable to the account that have not become due by virtue of terms of the contract between the claimant and the prime contractor or between the claimant and a subcontractor. When the claim is based on a written agreement, the claimant shall have the option

to enclose, with the sworn statement of account, as such notice a true copy of such agreement and advising completion or value of partial completion of same.

(1) When no written contract or written agreement exists between the claimant and the prime contractor or between the claimant and a subcontractor, except as provided in subparagraph B(a)(2) hereof, such notices shall state the name of the party for whom the labor was done or performed or to whom the material was delivered, and the approximate dates of performance and delivery, and describing the labor or materials or both in such a manner so as to reasonably identify the said labor or materials or both and amount due therefor. The claimant shall generally itemize his claim and shall accompany same with true copies of documents, invoices or orders sufficient to reasonably identify the labor performed or material delivered for which claim is being made. Such documents and copies thereof shall have thereon a reasonable identification or description of the job and destination of delivery.

(2) When the claim is for multiple items of labor or material or both to be paid for on a lump sum basis such notice shall state the name of the party for whom the labor was done or performed or to whom the material was delivered, the amount of the contract and whether written or oral, the amount claimed and the approximate date or dates of performance or delivery or both and describing the labor or materials or both in such a manner as to reasonably identify the said labor or materials.

(3) When a claimant who is a subcontractor or materialman to the prime contractor or to a subcontractor has a written unit price agreement, completed or partially completed, such notices shall be sufficient if such claimant shall attach to his sworn statement of account a list of units and unit prices as fixed by said contract and a statement of such units completed and of such units partially completed.

(b) Additional Notices Required of Claimants Who Do Not Have a Direct Contractual Relationship With the Prime Contractor.

Excepting an individual mechanic or laborer who is a claimant for wages, no right of action shall be legally enforceable, nor shall any suit be maintained under any provision of this Act by a claimant not having a direct contractual relationship with any prime contractor for material furnished or labor performed under the provisions of this Act unless such claimant has complied with those of the following additional requirements which are applicable to the claim:

(1) If any agreements exist between the claimant and any subcontractors by which payments are not to be made in full therefor in the month next following each month in which the labor was performed or the materials were delivered or both, such claimant shall have given written notice by certified or registered mail addressed to the prime contractor at his last known business address, or at his residence, on or before [~~within thirty-six (36) days after~~] the 15th [~~10th~~] day of the second month next following the commencement of the delivery of materials or the performance of labor that there has been agreed upon between the claimant and such subcontractors such retention of funds. Such notice shall indicate generally the nature of such retainage.

(2) Such Claimant shall have given written notice by certified or registered mail as described in the preceding subparagraph B(b)(1) to the prime contractor on or before [~~within thirty-six (36) days after~~] the 15th [~~10th~~] day of the second month [~~next~~] following each month in which the labor was done or performed, in whole or in part, or material delivered, in whole or in part, that payment therefor has not been received. A copy of the statement sent to the subcontractor shall suffice as such notice.

(3) If the basis of the claim is an undelivered specially fabricated item or items as described in paragraph C(b) (2), such claimant shall have

given written notice by certified or registered mail as described in the preceding subparagraph B(b)(1) to the prime contractor on or before the 15th day of the second month [~~within forty-five (45) days~~] after the receipt and acceptance of an order for hereinafter described specially fabricated material that such an order has been received and accepted.

(c) Notices of Unpaid Retainages Required. Retainage Defined. Retainage as referred to in this Act is defined as any amount representing any part of the contract payments which are not required to be paid to the claimant within the month next following the month in which the labor was done or material furnished or both.

When a contract between the prime contractor and such claimant, or between a subcontractor and such claimant provides for retainage, such claimant shall have given, on or before ninety (90) days after the final completion of the contract between the prime contractor and the awarding authority, written notices of the claim for such retainage by certified or registered mail to the prime contractor at his last known business address, or at his home address, and to the surety or sureties. Such notices shall consist of a statement showing the amount of the contract, the amount paid, if any, and the balance outstanding. No claim for such retainage contained in such notices shall be valid to an extent greater than the amount specified in the contract between the prime contractor or the subcontractor and the claimant to be retained, and in no event greater than ten per cent (10%) of such contract. However, such notices shall not be required if the amount claimed is part of a prior claim which has been made as heretofore described.

E. In the event any contractor, who shall have furnished the bonds provided in this Statute, shall abandon performance of his contract or the awarding authority shall lawfully terminate his right to proceed with performance thereof because of a default or defaults on his part, no further proceeds of the contract shall be payable to him unless and until all costs of completion of the work shall have been paid by him or his surety. Any balance remaining shall be payable to him or his surety as their interest may appear, as may be established by agreement or judgment of a court of competent jurisdiction. A surety that completes a contract or otherwise incurs a loss under any bond required by this Act has a priority claim to the proceeds of the contract, to the full extent of the surety's loss, over all other creditors of the prime contractor. That priority does not excuse the surety from paying any obligations that it may have under its payment bonds.

G. All suits instituted under the provisions of this Act shall be brought in a court of competent jurisdiction in the county in which the project or work, or any part thereof, is situated. No suit shall be instituted on the performance bond after the expiration of one (1) year after the date of final completion, abandonment, or termination of such contract. No suit shall be instituted by a claimant on the payment bond after the expiration of one (1) year after the date of the filing of a claim as provided by this Act [~~suit may be brought thereon under the provisions of Section 1.B. hereof~~]. The State of Texas shall not be liable for the payment of any cost or the expenses of any suit instituted by any party or parties on the payment bond.

H. In any proceeding to enforce a claim against a payment bond or in any proceeding to declare that any claim is invalid in whole or in part, the court may award costs and reasonable attorney's fees as are equitable and just.

I. (a) A prime contractor, on written request, shall furnish the following information within a reasonable time, but not later than the 10th day after the date the request is received, to any person who has furnished labor or materials for the prosecution of the work to be performed under the prime contract:

(1) the name and last known address of the department, board, agency, or other governmental authority with whom the prime contractor contracted for the construction; and

(2) a copy of the payment and performance bonds that relate to the construction, including bonds furnished by or to the prime contractor.

(b) A subcontractor, on written request by the public body, the prime contractor, a surety on a bond covering the prime contract, or a person furnishing work under the subcontract, shall furnish to that party the following information within a reasonable time, but not later than the 10th day after the date the request is received:

(1) the name and last known address of each person from whom the subcontractor purchased labor or materials for the construction project, other than materials that were furnished to the project from the subcontractor's inventory;

(2) the name and last known address of each person to whom the subcontractor furnished labor or materials on the construction project; and

(3) whether the subcontractor has furnished a bond for the benefit of its subcontractors or materialmen and if so, the name and last known address of the surety and a copy of the bond.

(c) Not later than the 30th day after the date a written request is received from the prime contractor or a surety on a bond on which a claim is made, a claimant shall furnish to the requesting person a copy of any applicable written agreement, purchase order, or contract and any billing, statement, or payment request of the claimant reflecting the amount claimed and the work performed by the claimant for which the claim is made. If requested, the claimant shall provide the estimated amount due for each calendar month in which the claimant has performed labor or furnished materials.

(d) If a person from whom information is requested does not have a direct contractual relationship on the project with the person requesting the information, the person from whom information is requested, other than a claimant requested to furnish information under Subsection (c) of this section, may require payment of the actual costs, not to exceed $25, for furnishing the requested information.

(e) A person, other than a claimant requested to furnish information under Subsection (c) of this section, who fails to furnish information as required by this section is liable to the requesting person for that person's reasonable and necessary costs incurred in procuring the requested information.

SECTION 38. The following sections of the Property Code are repealed:

(1) Section 53.171(c);

(2) Section 53.176;

(3) Section 53.209; and

(4) Section 53.240.

SECTION 39. The changes in law made by this Act apply only to matters relating to an original contract that is entered into on or after the effective date of this Act. Matters relating to an original contract that is entered into before that date are governed by the law as it existed on the date the contract was entered into, and the prior law is continued in effect for that purpose.

SECTION 40. This Act takes effect September 1, 1989.

SECTION 41. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1 - T. Smith

Amend Section 1 of **C.S.S.B. 1321** by adding a new subsection (3) to Section 53.021(c) of the Property Code, as follows:

a. On page 2, line 3, delete the word "and".

b. On page 2, line 6, delete the period (.) at the end of the sentence and insert the following: "; and".

c. On page 2, between lines 6 and 7, insert the following:

"(3) the plan or plat prepared by the architect, engineer, or surveyor asserting the lien is used in performing such construction."

Floor Amendment No. 2 - Criss

Amend Section 22 of **C.S.S.B. 1321** on line 9 of page 18, by inserting the following after the words "under Section 53.052":

"or within one year after completion of the work under the original contract under which the lien is claimed, whichever is later".

Floor Amendment No. 3 - Grusendorf

Amend **C.S.S.B. 1321** as follows:

(1) On page 9, between lines 26 and 27, add new Section 11 to read as follows and renumber subsequent sections accordingly:

SECTION 11. Section 53.059, Property Code, is amended by adding Subsections ( ) and ( ) to read as follows:

( ) A lien affidavit under Subchapter C that relates to a homestead must contain the following notice conspicuously printed, stamped, or typed in a size equal to at least 10-point boldfaced type or computer equivalent, at the top of the page:

"NOTICE: THIS IS NOT A LIEN. THIS IS ONLY AN AFFIDAVIT CLAIMING A LIEN."

( ) For the lien on a homestead to be valid, the notice required to be given to the owner under Section 53.056, 53.057, or 53.058, as applicable, must include or have attached the following statement:

"If a person who furnishes materials or performs labor for construction of improvements on your property is not paid, your property may be subject to a lien for the unpaid amount if:

(1) after receiving notice of the unpaid claim from the claimant, you fail to withhold payment to your contractor that is sufficient to cover the unpaid claim until the dispute is resolved; or

(2) during construction and for 30 days after completion of construction, you fail to retain 10 percent of the contract price or 10 percent of the value of the work performed by your contractor.

If you have complied with the law regarding the 10 percent retainage and you have withheld payment to the contractor sufficient to cover any written notice of claim and have paid that amount, if any, to the claimant, any lien claim filed on your property by a subcontractor or supplier, other than a person who contracted directly with you, will not be a valid lien on your property. In addition, except for the required 10 percent retainage, you are not liable to a subcontractor or supplier for any amount paid to your contractor before you received written notice of the claim."

Floor Amendment No. 4 - T. Smith

Amend **C.S.S.B. 1321** by deleting the caption of the bill and inserting the following:

"relating to mechanic's liens and bonds for private and public works."

Floor Amendment No. 5 - Russell

Amend **C.S.S.B. 1321** by deleting lines 17 through 21 on page 28 and inserting the following:

Notwithstanding any provision in this Act or in Chapters 252 and 262 of the Local Government Code, if the governmental authority fails to obtain from the prime contractor a valid payment bond covering a contract in excess of $25,000, the authority is subject to the same liability as that of a surety who had issued a valid bond if the authority had complied with this section and a claimant is entitled to a lien on funds due the prime contractor in the same manner and to the same extent as if the contract were subject to Subchapter J, Chapter 53, Property Code.

Floor Amendment on Third Reading - Russell

Amend second reading floor amendment No. 5 as follows:

(1) On line 5 delete the word "valid".
(2) On line 6 between the words "bond" and "covering" insert the following: "in compliance with this article".

The amendments were read.

On motion of Senator Dickson and by unanimous consent, the Senate concurred in the House amendments to **S.B. 1321** viva voce vote.

SENATE BILL 1204 WITH HOUSE AMENDMENTS

Senator Dickson called **S.B. 1204** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment - Pierce

Amend **S.B. 1204** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Subsection (a), Section 139, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The Director of the Texas Department of Public Safety shall after notice and public hearing adopt such regulations as may be deemed necessary for the safe [~~operation of motor carriers and for the safe~~] transportation of hazardous materials. The Public Safety Commission shall, after notice and public hearing conducted by the Texas Department of Public Safety, adopt such regulations as may be deemed necessary for the safe operation of motor carriers. Such regulations shall duplicate or be consistent with current federal regulations, including the Hazardous Materials Regulations (49 C.F.R. Parts 101-199), and the Federal Motor Carrier Safety Regulations (49 C.F.R. Parts 386 and 388-399). The [~~Director of~~] Public Safety Commission and the Texas Department of Public Safety [~~is~~] are hereby authorized to adopt all or any part of said regulations by reference and any such adoption shall be construed to incorporate amendments thereto as may be made from time to time. Except for regulations relating to the safe transportation of hazardous material, such regulations shall not be enforced until adopted by the Public Safety Commission pursuant to this subsection.

(1) The regulations must include provisions to ensure that:

(A) [~~(1)~~] a motor carrier's vehicle is safely maintained, equipped, loaded, and operated;

(B) [~~(2)~~] the responsibilities imposed on the driver of a motor carrier's vehicle do not impair the driver's ability to operate the vehicle safely;

(C) [~~(3)~~] the physical condition of the driver of a motor carrier's vehicle is adequate to enable the driver to operate the vehicle safely; and

(D) [~~(4)~~] a motor carrier is able to pay or assure the payment of damages for liability for accidents arising from the motor carrier's ownership, maintenance, or use of a motor vehicle.

(2) Such regulations, except hazardous material regulations, whether adopted directly or by reference, shall not apply to farm vehicles operated intrastate with a gross weight rating of less than 48,000 pounds, nor to any other vehicle operated intrastate with a gross weight rating of 26,000 pounds or less, except vehicles designed to transport 15 or more passengers including the driver. Such regulations shall be applicable to vehicles requiring hazardous material placarding.

(3) Such regulations shall not prevent intrastate drivers from driving up to 12 hours following eight consecutive hours off.

(4) Such regulations shall not apply to a vehicle operated intrastate and used in oil well servicing or oil well drilling and which is constructed as a machine consisting in general of a mast, an engine for power, a draw works, and a chassis permanently constructed or assembled for such purpose or purposes.

(5) Such regulations shall not apply to a mobile crane operated intrastate which is an unladen self-propelled vehicle constructed as a machine used to raise, shift, or lower weights.

(6) The maintenance of any type of government form, separate company form, Driver's Record of Duty Status, or a Driver's Daily Log is not required within a 150 air mile radius of the normal work reporting location:

(a) if owner has another method by which he keeps, as a business record, date and time of delivery of product or service and location or delivery of product or service so that a general record of the driver's hours of service may be compiled, or

(b) if another law requires or specifies the maintenance of delivery tickets, sales invoices, or other documents which show the date of delivery and quantity of merchandise delivered, so that a general record of the driver's hours of service may be compiled, and

(c) provided that the business records generally conform with the following:

(A) the time the driver reports for duty each day;

(B) the total number of hours the driver is on duty each day;

(C) the time the driver is released from duty each day; and

(D) the total time for the preceding 7 days in accordance with 49 C.F.R. 395.8(j)(2) of the Federal Motor Carrier Safety Regulations for drivers used for the first time or intermittently.

(7) Where any conflict arises between this act, or the state rules and regulations promulgated by the Commission pursuant to it, and the Federal Motor Carrier Safety Regulations, (49 C.F.R. Parts 386, 388-399), the federal regulations shall prevail; and nothing in this act shall empower the Commission or its agents to promulgate or enforce rules or regulations that require more stringent standards than the Federal Motor Carrier Safety Regulations, it being the intention of this legislature that each and every exemption and exception provided for by the Federal Regulations shall apply and are adopted in this act.

(8) A driver who operates a motor vehicle in intrastate commerce, not transporting property requiring a hazardous materials placard, and was regularly employed prior to the effective date of this law is not required to meet the medical standards set forth in the Federal Motor Carrier Safety Regulations.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1 - Perry

Amend **C.S.S.B. 1204** in the following manner: On page 4, strike lines 23-27, and on page 5, strike line 1 and substitute the following:

(8) A person who is regularly employed prior to the effective date of this act as a commercial motor vehicle driver in Texas, in intrastate commerce, not transporting property requiring a hazardous materials placard, is not required to meet the medical standards set forth in the Federal Motor Carrier Safety Regulations.

Floor Amendment No. 2 - Willy

Amend **C.S.S.B. 1204**, on page 3, by inserting the phrase or water between the words "oil" and "well" in both places on line 1.

Floor Amendment No. 3 - Evans

Amend **C.S.S.B. 1204** as follows:

(1) Strike Section 2 of the bill and substitute the following:

SECTION 2. Sections 143A(a) and (b), Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) When a person is charged with a misdemeanor offense under this Act, other than a violation of Section 51, committed while operating a motor vehicle, the defendant shall be advised of his right to successfully complete a driving safety course and the court:

(1) in its discretion may defer proceedings and allow the person 90 days to present evidence that, subsequent to the alleged act, the person has successfully completed a driving safety course approved by the Texas Department of Public Safety or other driving safety course approved by the court; or

(2) shall defer proceedings and allow the person 90 days to present a department-approved certificate of course completion as written evidence that, subsequent to the alleged act, the person has successfully completed a driving safety course approved by the Texas Department of Public Safety or another driving safety course approved by the court, if:

(A) on or before the answer date on the citation the person enters a plea in person or in writing of No Contest or Guilty and presents to the court an oral request or a written request, in person or by mail postmarked on or before the answer date on the citation, to take a course;

(B) the court enters judgment on the person's plea of No Contest or Guilty at the time the plea is made, but defers imposition of the judgment for 90 days;

(C) the person has a valid Texas driver's license or permit;

(D) [~~(C)~~] the person's driving record as maintained by the Texas Department of Public Safety does not indicate successful completion of a driving safety course under this subdivision within the two years immediately preceding the date of the alleged offense;

(E) [~~(D)~~] the person files an affidavit with the court stating that the person is not in the process of taking a course under this subdivision and has not completed a course under this subdivision that is not yet reflected on the person's driving record; and

(F) [~~(E)~~] the offense charged is for an offense covered by this section other than speeding 25 miles per hour or more over the posted speed limit at the place where the alleged offense occurred.

(b) When the person complies with the provisions of Subsection (a) of this section and a certificate of course completion approved by the department is accepted by the court, the court shall remove the judgment and dismiss the charge, but the court may only dismiss one charge for completion of each course.

When a charge is dismissed under this section, the charge may not be part of the person's driving record or used for any purpose, but the court shall report the fact that a person has successfully completed a driving safety course and the date of completion to the Texas Department of Public Safety for inclusion in the person's driving record. The court shall note in its report whether the course was taken under the procedure provided by Subdivision (2) of Subsection (a) of this section for the purpose of providing information necessary to determine eligibility to take a subsequent course under that subdivision. An insurer delivering or issuing for delivery a motor vehicle insurance policy in this state may not cancel or increase the premium charged the insured under the policy merely because of an offense dismissed under this section or because the insured completed a driving safety course under this section.

SECTION 2. This Act takes effect September 1, 1989, and applies only to requests to take a driving safety course and defer proceedings under Section 143A(a), Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), for an offense committed on or after the effective date of this Act. A request for a driving safety course to defer proceedings for an offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and that law is continued in effect for that purpose. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendments were read.

On motion of Senator Dickson and by unanimous consent, the Senate concurred in the House amendments to **S.B. 1204** viva voce vote.

CONFERENCE COMMITTEE ON HOUSE BILL 3109

Senator Armbrister called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 3109** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on **H.B. 3109** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Armbrister, Chairman; Washington, Parker, Carriker and Bivins.

SENATE BILL 332 WITH HOUSE AMENDMENT

Senator Edwards called **S.B. 332** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment - Oakley

Amend **S.B. 332** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Title 6, Human Resources Code, is amended by adding Chapter 106 to read as follows:

CHAPTER 106. CRIMINAL HISTORY CHECKS OF EMPLOYEES IN CERTAIN FACILITIES SERVING THE ELDERLY OR DISABLED

Sec. 106.001. DEFINITIONS. In this chapter, "facility" means:

(1) a nursing home, custodial care home, or other institution licensed by the Texas Department of Health under Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442c, Vernon's Texas Civil Statutes);

(2) a personal care facility licensed by the Texas Department of Health under Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442c, Vernon's Texas Civil Statutes), or under Article 4442c-4, Revised Statutes, if **S.B. No. 487**, Acts of the 71st Legislature, Regular Session, becomes law;

(3) a home health agency licensed by the Texas Department of Health under Chapter 642, Acts of the 66th Legislature, Regular Session, 1979 (Article 4447u, Vernon's Texas Civil Statutes);

(4) an adult day care facility or adult day health care facility licensed by the Texas Department of Health under Chapter 103 of this code; or

(5) a facility for the mentally retarded licensed by the Texas Department of Health.

Sec. 106.002. APPLICABILITY OF CHAPTER. (a) If a facility is part of a large complex of buildings, the requirement of a criminal conviction check under this chapter applies only to a person who will work primarily in the immediate boundaries of the facility.

(b) This chapter applies to an employee or a person applying for employment at a home health agency only if the employee or person is or will be employed in a position the duties of which involve direct contact with a consumer of home health services.

Sec. 106.003. CRIMINAL CONVICTION RECORDS. (a) The Texas Department of Human Services, on behalf of the Texas Department of Health, is entitled to obtain criminal conviction records maintained by the Department of Public Safety or the Federal Bureau of Investigation Identification Division to investigate an employee or a person applying for employment at a facility.

(b) The Department of Public Safety may provide to the Texas Department of Human Services, the Texas Department of Health, or the facility the criminal conviction records of a person being investigated only if the records relate to:

(1) a misdemeanor or felony classified as an offense against the person or the family;

(2) a misdemeanor or felony classified as public indecency;

(3) a felony violation of a statute intended to control the possession or distribution of a substance included in the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes);

(4) a felony violation of Section 31.03, Penal Code;

(5) robbery or aggravated robbery, as described by Chapter 29, Penal Code; or

(6) burglary, as described by Section 30.02, Penal Code.

Sec. 106.004. CRIMINAL CONVICTION CHECK REQUIRED BEFORE OFFER OF PERMANENT EMPLOYMENT. (a) Except as provided by Subsection (b) of this section, a facility may not make an offer of permanent employment to a person covered by this chapter unless the facility provides to the Texas Department of Human Services the information relating to the person required by the Texas Department of Human Services, such as fingerprints, social security number, or complete name.

(b) A facility may make an offer of permanent employment to a person licensed under other law, including a nursing home administrator or a nurse, without following the procedures under this chapter for a criminal conviction check.

(c) Immediately after receiving the information from the facility, the Texas Department of Human Services shall request that the Department of Public Safety conduct a criminal conviction check on the person.

(d) At the request of the facility, the Texas Department of Human Services, on behalf of the Texas Department of Health, shall investigate any person employed at a facility, including a person licensed under other law or a person who is exempt under Section 106.002(b) of this chapter.

Sec. 106.005. TEMPORARY EMPLOYMENT PENDING CRIMINAL CONVICTION CHECK. (a) A facility may make an offer of temporary employment to a person covered by this chapter pending the results of a criminal conviction check on the person.

(b) The facility shall provide to the Texas Department of Human Services the required information relating to the person not later than the 72nd hour after the hour on which the person accepts temporary employment.

(c) The facility may not hire a person on a permanent basis until the facility receives the results of the criminal conviction check.

Sec. 106.006. NOTIFICATION OF APPLICANT. A facility shall inform each applicant for employment that:

(1) the facility is required to conduct a criminal conviction check before it may make an offer of employment to the applicant; and

(2) the facility will request a criminal conviction check on the applicant.

Sec. 106.007. NOTIFICATION OF RESULTS. If the Texas Department of Human Services receives notice that a person has been convicted of an offense under Section 106.003(b) of this code, the Texas Department of Human Services shall immediately notify the appropriate facility of the results and provide a copy of the results to the Texas Department of Health.

Sec. 106.008. CONVICTION BARS EMPLOYMENT. (a) Except as provided by Subsections (b) and (c) of this section, a facility may not hire a person covered by this chapter or shall immediately terminate a person's employment if the results of the criminal conviction check reveal that the person has been convicted of an offense listed under Section 106.003(b) of this code.

(b) A facility may employ or continue employing a person convicted of an offense under the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes) only if:

(1) the person produces evidence that the person has successfully completed a drug rehabilitation program; and

(2) the conviction was not for an offense under Section 4.012(b), 4.052, or 4.053 of that Act.

(c) A facility may also employ or continue employing a person convicted of any offense listed under Section 106.003(b)(4) of this code if:

(1) the person can prove to the facility's satisfaction that the offense would have been classified as a misdemeanor if the law in effect when the facility obtains the results had applied to that offense;

(2) the offense occurred at least 10 years before the date on which the person applied for employment at the facility; and

(3) the person has not been convicted of any subsequent criminal offenses listed in Section 106.003(b) of this code.

Sec. 106.009. RECORDS PRIVILEGED. (a) All criminal records received by the Texas Department of Human Services are privileged information and are for the exclusive use of the Texas Department of Human Services, the Texas Department of Health, and the facility for which the Texas Department of Human Services requested the information.

(b) The records may not be released or otherwise disclosed to any person or agency except on court order or with the written consent of the person being investigated.

Sec. 106.010. CRIMINAL PENALTY. (a) A person commits an offense if the person releases or otherwise discloses any information received under this chapter without the authorization prescribed by Section 106.009(b) of this code.

(b) An offense under this section is a felony of the second degree.

Sec. 106.011. CIVIL LIABILITY. A facility or an officer or employee of a facility is not civilly liable for failure to comply with this chapter if the facility makes a good faith effort to comply.

Sec. 106.012. APPLICABILITY TO NURSE AIDE REGISTRY PROGRAM; DUTY OF PERSON TRAINING FACILITY EMPLOYEES. (a) When the nurse aide registry program is implemented in this state as required by the federal Omnibus Budget Reconciliation Act of 1987 (OBRA) (Pub. L. No. 100-203), the Texas Department of Health shall develop rules to require all nursing homes that are mandated under OBRA and training entities that train nurse aides to use the registry program.

(b) A temporary employment, nursing pool, private duty nurse, or sitter service, or another organization that provides temporary nurse aides to a facility shall obtain a criminal conviction check under this chapter of a person referred to a facility before making the referral.

(c) The Texas Department of Health shall include as part of a person's record in the nurse aide registry any notification of the results of criminal conviction checks related to the person received from the Texas Department of Human Services under Section 106.007 of this code.

SECTION 2. Section 18, Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442c, Vernon's Texas Civil Statutes), is repealed. The repeal by this Act of Section 18, Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442c, Vernon's Texas Civil Statutes), does not apply to an offense committed under that section before the effective date of the repeal. An offense committed before that date is covered by that section as it existed on the date on which the offense was committed, and the former law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 1989.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Edwards and by unanimous consent, the Senate concurred in the House amendment to **S.B. 332** viva voce vote.

SENATE BILL 838 WITH HOUSE AMENDMENT

Senator Edwards called **S.B. 838** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Local and Consent Calendars Committee Amendment - Madla

Amend **S.B. 838** on page 2 by adding new Section 6 to read as follows:

Sec. 6. EXEMPTIONS. The requirements imposed by this Article do not apply to the files maintained by the Texas Department of Public Safety relating to the drivers of motor vehicles, pursuant to Section 21 of Article 6687b, V.T.C.S., as amended.

The amendment was read.

Senator Edwards moved to concur in the House amendment to **S.B. 838**.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Parker, Parmer, Washington.

SENATE BILL 1232 WITH HOUSE AMENDMENT

Senator Edwards called **S.B. 1232** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment - Harrison

Amend **S.B. 1232** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Section 44.004(c), Agriculture Code, is amended to read as follows:

(c) A grant recipient under this section must match the amount of the state grant with an equal amount [~~of other money~~], with at least one-half of the matching share [~~money~~] coming from the private sector. The matching share may consist of money, land, buildings, dedicated loan pools, business assistance, or any in-kind contributions approved by the commissioner and board.

SECTION 2. Section 44.005(c), Agriculture Code, is amended to read as follows:

(c) A grant recipient under this section must match the amount of the state grant with an equal amount [~~of other money~~]. The matching share may consist of money, land, buildings, dedicated loan pools, business assistance, or any in-kind contributions approved by the commissioner and board.

SECTION 3. Section 44.006(c), Agriculture Code, is amended to read as follows:

(c) A grant recipient under this section must match the amount of the state grant with assets valued at $3 for every $1 of the state grant. [~~The state grant must be used primarily for professional services.~~] The [~~local~~] matching share may consist of money, [~~be in the form of~~] land, buildings, business assistance, [~~and~~] dedicated loan pools, or any in-kind contributions approved by the commissioner and board [~~as well as cash contributions~~].

SECTION 4. Section 44.007(b), Agriculture Code, is amended to read as follows:

(b) The commissioner shall promulgate rules for the loan portion of the linked deposit program. The rules must:

(1) require that priority be given to agricultural producers domiciled in the state; and

(2) include a list of the categories of crops customarily grown in the state [~~Texas~~] and another list of crops that are alternative agricultural crops.

SECTION 5. Section 44.010, Agriculture Code, is amended to read as follows:

Sec. 44.010. LIMITATIONS IN PROGRAM. (a) At any one time, not more than $25 [~~$5~~] million may be placed in linked deposits under this chapter. Not more than one-half of the total amount authorized under this subsection may be used for loans that exceed $250,000.

(b) The maximum amount of a loan under this chapter to process and market Texas agricultural crops is $400,000 [~~$250,000~~]. The maximum amount of a loan under this chapter to produce alternative agricultural crops in this state is $100,000.

(c) A loan granted pursuant to this chapter must be applied to:

(1) the purchase or lease of land, equipment, seed, fertilizer, direct marketing facilities, or processing facilities;

(2)[~~, or to~~] payment for professional services; or

(3) another use the commissioner determines promotes the diversification of agriculture in the state.

SECTION 6. The change in the law made by this Act applies only to grants and loans made on or after the effective date of this Act. A grant or loan made before the effective date of this Act is governed by the law in effect when the grant or loan was made, and the former law is continued in effect for that purpose.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Edwards moved to concur in the House amendment to **S.B. 1232**.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Parker, Parmer, Washington.

SENATE BILL 1072 WITH HOUSE AMENDMENT

Senator Green called **S.B. 1072** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Amendment - Marchant

Amend **S.B. 1072** by adding the following language on line 8 of page two of the bill between the words "charter" and "under":

"or if a new substitution charter was not insured by the Banking Commissioner prior to May 26, 1989 if the Banking Commissioner accepted the former charter presented after May 26, 1988."

The amendment was read.

On motion of Senator Green and by unanimous consent, the Senate concurred in the House amendment to **S.B. 1072** viva voce vote.

SENATE BILL 1533 WITH HOUSE AMENDMENTS

Senator Green called **S.B. 1533** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment - Madla

Amend **S.B. 1533** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Section 28, Texas Mental Health Code (Article 5547-28, Vernon's Texas Civil Statutes), is amended by adding Subsection (h) to read as follows:

(h) If extremely hazardous weather conditions exist or a disaster occurs, the presiding judge or magistrate may by written order made each day extend by an additional 24 hours the period during which the person may be detained. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

SECTION 2. Section 32(a), Texas Mental Health Code (Article 5547-32, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A sworn Application for Court-Ordered Mental Health Services may be filed by any adult person, or the county or district attorney, with the county clerk in the county in which the person resides or in which the person is found or in which the person is receiving mental health services by court order or after apprehension by a peace officer under Section 26 of this code. However, upon request of the person or his attorney, the court may in its discretion for good cause shown transfer the application to the county of the person's residence, if not initially filed there. If an application is filed without an accompanying Certificate of Medical Examination for Mental Illness, the application shall be filed by the county or district attorney.

SECTION 3. Section 38(a), Texas Mental Health Code (Article 5547-38, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A probable cause hearing shall be held within 72 hours of the time detention begins pursuant to the order for protective custody; provided, however, that if the 72-hour period ends on a Saturday or Sunday or a legal holiday, the probable cause hearing shall be held on the first succeeding business day. The probable cause hearing may be postponed each day for an additional period not to exceed 24 hours if an extreme emergency is declared by the presiding judge or magistrate based on extremely hazardous weather conditions or on the occurrence of a disaster which threatens [~~threaten~~] the safety of the patient or other essential parties to the hearing. The hearing shall be before a magistrate or, at the discretion of the presiding judge, before a master appointed by the presiding judge. The master shall receive reasonable compensation. At the hearing, the patient and his attorney shall have an opportunity to appear and present evidence to challenge the allegation that the patient presents a substantial risk of serious harm to himself or others. The magistrate or master may consider evidence including letters, affidavits, and other material that may not be admissible or sufficient in a subsequent commitment hearing. The state may prove its case on the physician's certificate filed in support of the initial detention.

SECTION 4. Section 42, Texas Mental Health Code (Article 5547-42, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 42. SETTING ON APPLICATION FOR COURT-ORDERED MENTAL HEALTH SERVICES. (a) When an Application for Court-Ordered

Mental Health Services is filed, the judge or magistrate designated pursuant to Subsection (b) of Section 36 of this code shall set a date for a hearing to be held within 14 days of the filing of the application. If the proposed patient or his attorney objects, the hearing shall not be held within the first three days following the filing of the application. Upon proper motion by either party and for good cause shown or upon agreement of the parties, the court may grant one or more continuances of the hearing, provided that the hearing shall be held no later than 30 days from the filing of the original application.

(b) If extremely hazardous weather conditions exist or if a disaster occurs that threatens the safety of the patient or other essential parties to the hearing, the judge or magistrate may by written order made each day postpone the hearing for 24 hours. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

SECTION 5. Sections 1.01 and 1.03, Texas Alcohol and Drug Abuse Services Act (Article 5561c-2, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 1.01. PURPOSE. The purpose of this Act is to prevent broken homes and the loss of lives by creating the Texas Commission on Alcohol and Drug Abuse. The commission shall cooperate with all interested and affected federal, state, and local agencies and develop and coordinate prevention, intervention, treatment, and rehabilitation programs. The commission shall expand drug, inhalant, and alcohol abuse services for children when funds are available because of the long-term benefits of the services to the state and its citizens. Chemical dependency is [~~Alcohol and drug abuse are~~] recognized as a preventable and treatable illness [~~illnesses~~] and public health problem [~~problems~~] affecting the general welfare and the economy of the state. The need for proper and sufficient facilities, programs, and procedures for prevention, intervention, treatment, and rehabilitation is recognized. It is the policy of this state that a chemically dependent person [~~an alcohol or drug abuser~~] shall be offered a continuum of services that will enable the person to lead a normal life as a productive member of society.

Sec. 1.03. DEFINITIONS. In this Act:

(1) "Applicant" means an adult who files an application for emergency detention, protective custody, or commitment of a chemically dependent person.

(2) "Certificate" means a sworn certificate of medical examination for chemical dependency executed under this Act.

(3) "Chemical dependency" means the abuse of, psychological or physical dependence on, or addiction to alcohol or a controlled substance.

(4) [~~"Alcohol abuse" means the excessive use of alcohol in a manner that interferes with one or more of the following to a less than chronic extent: physical or psychological functioning, social adaptation, educational performance, or occupational functioning.~~

[~~(2) "Alcoholism" means the loss of self-control with respect to the use of alcohol, or the pathological use of alcohol that chronically impairs social or occupational functioning, or physiological dependence on alcohol as evidenced by tolerance or withdrawal symptoms.~~

[~~(3) "Alcoholic" means the individual suffering from alcoholism.~~

[~~(4) "Approved treatment program" means a substance abuse treatment facility approved by the commission to carry out a specific provision of this Act.~~

[~~(5)~~] "Commission" means the Texas Commission on Alcohol and Drug Abuse.

(5) "Controlled substance" means a toxic inhalant or any substance designated as a controlled substance by the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes).

(6) "Intervention" means constructive methods or programs designed to interrupt the onset or progression of chemical dependency in the early stages.

(7) "Legal holiday" means a state holiday specified in Article 4591, Revised Statutes, or an officially declared county holiday that applies to a court in which proceedings under this Act are held.

[~~(6) "Drug abuse" means misuse or abuse of any controlled substance for other than appropriate and duly prescribed medicinal purposes.~~

[~~(7) "Drug-dependent person" means a person who is using a controlled substance and who is in a state of psychic or physical dependence or both arising from administration of a controlled substance. Drug dependence is characterized by behavioral and other responses that include a strong compulsion to take a controlled substance in order to experience its psychic effects or to avoid the discomfort of its absence.~~]

(8) "Prevention" means constructive methods or programs designed to reduce an individual's risk of abusing alcohol or a controlled substance or becoming chemically dependent [~~addicted to alcohol or drugs~~].

(9) "Proposed patient" means a minor or adult named in an application for emergency detention, protective custody, or commitment under this Act. [~~"Intervention" means constructive methods or programs designed to interrupt the onset or progression of substance abuse or dependence in the early stages.~~]

(10) "Rehabilitation" means a planned and organized program designed to reestablish the social and vocational life of a [~~substance-free~~] person after treatment.

(11) "Toxic inhalant" means a gaseous substance inhaled by a person to produce a desired physical or psychological effect that may cause personal injury or illness to the inhaler.

(12) [~~(11)~~] "Treatment" means a planned, structured, and organized program designed to initiate and promote [~~maintain~~] a person's chemical-free [~~substance-free~~] status, or to maintain the person free of illegal drugs.

(13) "Treatment facility" means a public or private hospital, detoxification facility, primary care facility, intensive care facility, long-term care facility, outpatient care facility, community mental health center, health maintenance organization, recovery center, halfway house, ambulatory care facility, any other facility that is required to be licensed and approved by the commission, or a facility licensed or operated by the Texas Department of Mental Health and Mental Retardation. The term does not include an educational program for intoxicated drivers or the individual office of a private, licensed health care practitioner who personally renders private individual or group services within the scope of the practitioner's license and in the practitioner's office.

SECTION 6. Section 1.04(b), Texas Alcohol and Drug Abuse Services Act (Article 5561c-2, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) A person is not eligible for appointment as a member if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of chemical dependency [~~alcoholism or drug abuse~~];

(2) is employed by or participates in the management of a business entity or other organization regulated by the commission or receiving funds from the commission;

(3) owns, controls, or has, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the commission or receiving funds from the commission; or

(4) uses or receives a substantial amount of tangible goods, services, or funds from the commission.

SECTION 7. Section 1.08, Texas Alcohol and Drug Abuse Services Act (Article 5561c-2, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1.08. RESTRICTIONS ON COMMISSION MEMBERSHIP AND EMPLOYMENT. (a) An officer, employee, or paid consultant of an association that has as its primary interest the provision of services or other matters relating to chemical dependency [~~alcohol or drug abuse~~] may not be a member or employee of the commission, nor may a person who cohabits with or is the spouse of an officer, managerial employee, or paid consultant of such an association be a member of the commission or an employee of the commission grade 17 or over, including exempt employees, according to the position classification schedule under the General Appropriations Act.

(b) A person who is required to register as a lobbyist under Chapter 305, Government Code, by virtue of his activities for compensation in or on behalf of a provider of chemical dependency [~~alcohol or drug abuse~~] services, may not serve as a member of the commission or act as the general counsel to the commission.

SECTION 8. Section 1.11(e), Texas Alcohol and Drug Abuse Services Act (Article 5561c-2, Vernon's Texas Civil Statutes), is amended to read as follows:

(e) The commission is designated as the state agency to receive and administer federal funds for chemical dependency [~~alcohol and drug abuse~~] and to promulgate all necessary policies relating to chemical dependency [~~alcohol and drug abuse~~].

SECTION 9. Section 1.14(a), Texas Alcohol and Drug Abuse Services Act (Article 5561c-2, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The commission shall:

(1) receive, control, and distribute all federal public funds for alcohol and substance abuse and chemical dependency services in this state;

(2) provide for research and study of the problems of chemical dependency [~~substance abuse~~] in this state and seek to focus public attention on these problems through public information and education programs;

(3) [~~(2)~~] plan, develop, coordinate, evaluate, and implement programs for the prevention, intervention, treatment, and rehabilitation of chemical dependency [~~substance abuse and alcoholism and drug dependence~~] in cooperation with federal and state agencies, local governments, organizations, and individuals and provide technical assistance, funds, and consultation services for statewide and community-based services;

(4) [~~(3)~~] establish cooperative relationships with and enlist the assistance of other state, federal, and local agencies, hospitals, clinics, public health, welfare, and criminal justice system authorities, and educational and medical agencies and organizations, and other related public and private groups and individuals;

(5) [~~(4)~~] sponsor, promote, and conduct educational programs on the prevention and treatment of chemical dependency [~~substance abuse, alcoholism, and drug dependence~~] and maintain a public information clearinghouse to purchase and provide books, literature, audiovisual, and other educational material for the programs;

(6) [~~(5)~~] sponsor, promote, and conduct training programs for persons delivering prevention, intervention, treatment, and rehabilitation services and for persons in the criminal justice system or otherwise in a position to identify chemically [~~substance abusers, alcoholics, drug~~] dependent persons, and their families in need of services;

(7) [~~(6)~~] require programs rendering services to chemically [~~substance abusers and alcoholics and drug~~] dependent persons to safeguard their legal rights of citizenship and maintain the confidentiality of client records as required by state and federal law;

(8) [~~(7)~~] maximize the use of available funds for direct services rather than administrative services;

(9) [~~(8)~~] consistently monitor the expenditure of funds and the provision of services of all grant and contract recipients to assure that the services are effective and properly staffed and meet the standards adopted under this Act, and shall make the monitoring reports a matter of public record;

(10) [~~(9)~~] license facilities that treat chemically [~~alcohol or alcohol and drug~~] dependent persons;

(11) [~~(10)~~] use funds appropriated to the commission to carry out the mandate of this Act, and maximize the overall state allotment of federal funds; and

(12) [~~(11)~~] establish minimum criteria that peer assistance programs must meet to be governed by and entitled to the benefits of a law that authorizes licensing and disciplinary authorities to establish or approve peer assistance programs for impaired professionals.

SECTION 10. Title 1, Texas Alcohol and Drug Abuse Services Act (Article 5561c-2, Vernon's Texas Civil Statutes), is amended by adding Sections 1.16 and 1.17 to read as follows:

Sec. 1.16. EMERGENCY TREATMENT RESOURCES. The executive director, within funds appropriated for that purpose, may develop emergency treatment resources for persons who appear to be:

(1) chemically dependent;

(2) under the influence of alcohol or a controlled substance and in need of medical attention; or

(3) undergoing withdrawal or experiencing medical complications related to a chemical dependency.

Sec. 1.17. REFERRAL SERVICES FOR PERSONS FROM CRIMINAL JUSTICE SYSTEM. (a) The executive director, within funds appropriated for that purpose, may establish programs for referral, treatment, or rehabilitation of persons from the criminal justice system within the terms of bail, probation, conditional discharge, parole, or other conditional release.

(b) A referral may not be inconsistent with medical or clinical judgment or conflict with this Act or applicable federal regulations.

SECTION 11. Title 2, Texas Alcohol and Drug Abuse Services Act (Article 5561c-2, Vernon's Texas Civil Statutes), is amended to read as follows:

TITLE 2. INVOLUNTARY TREATMENT OF CHEMICALLY DEPENDENT PERSONS [~~ALCOHOLICS~~]

SUBTITLE A. CONFIDENTIALITY [~~EMERGENCY DETENTION~~]

Sec. 2.01. RELEASE OF INFORMATION. (a) If a minor is admitted to a treatment facility without the consent of the minor's parent or guardian, the facility may not release to the minor's parent or guardian or to any other person patient information relating to that minor without obtaining the minor's written consent.

(b) If a minor or an adult is admitted to a treatment facility with the consent of the person's parent or guardian, the facility may release patient information relating to that minor or adult only with the written consent of the parent or guardian, as appropriate.

(c) If a patient is not a minor or does not have a legal guardian, the treatment facility may release patient information relating to the patient only with the written consent of the patient.

Sec. 2.02. RELATION TO OTHER LAW. A treatment facility that releases information with or without the consent required by Section 2.01 of this Act shall comply with applicable federal law relating to the form and content of the information.

SUBTITLE B. EMERGENCY DETENTION AND PRECOMMITMENT PROCEEDINGS

Sec. 3.01. APPREHENSION BY PEACE OFFICER WITHOUT WARRANT. (a) A peace officer may without first obtaining a warrant take a person

into custody and immediately transport the person to an inpatient treatment facility as prescribed by Subsection (d) of this section if the officer:

(1) has reason to believe and does believe that:

(A) the person is chemically dependent; and

(B) because of that chemical dependency there is a substantial risk of harm to the person or to others unless the person is immediately restrained; and

(2) believes that there is not sufficient time to obtain a warrant before taking the person into custody.

(b) The belief that a person represents a substantial risk of serious harm may be based on:

(1) the person's behavior; or

(2) evidence of severe emotional distress and deterioration in the person's mental or physical condition to the extent that the person cannot remain at liberty.

(c) A peace officer may base his belief that the person meets the criteria for apprehension on:

(1) the representation of a credible person;

(2) the conduct of the apprehended person; or

(3) the circumstances under which the apprehended person is found.

(d) A peace officer shall immediately transport a person apprehended under this section to the nearest appropriate inpatient treatment facility for a preliminary examination. The officer shall transport the person to a facility considered suitable by the county's health authority if an appropriate inpatient treatment facility is not available. A person may not be detained in a jail or similar detention facility except in an extreme emergency. A person detained in a jail or a nonmedical facility shall be kept separate from any person who is charged with or convicted of a crime.

(e) A peace officer shall immediately file an application for detention after transporting a person to a facility under this section. The application for detention must contain the following information:

(1) that the officer has reason to believe and does believe that the person evidences chemical dependency;

(2) that the officer has reaons to believe and does believe that the person evidences a substantial risk of serious harm to himself or others;

(3) a specific description of the risk of harm;

(4) that the officer has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained;

(5) that the officer's beliefs are based on specific recent behavior, overt acts, attempts, or threats that were observed by or reliably reported to the officer;

(6) a detailed description of the specific behavior, acts, attempts, or threats; and

(7) the name and relationship to the apprehended person of any person who reported or observed the behavior, acts, attempts, or threats.

(f) The person shall be released after a preliminary exemination is conducted under Section 3.02 of this Act unless the examining physician determines that emergency detention is necessary and provides the statement prescribed by Section 3.02 of this Act. If a person is not admitted to a facility after the preliminary examination in accordance with Section 3.02 of this Act and is not arrested or does not object, arrangements shall be made to immediately return the person to:

(1) the location in which the person was apprehended;

(2) the person's place of residence in this state; or

(3) another suitable location.

(g) The county in which the person was apprehended shall pay the costs of the person's return.

(h) A treatment facility may provide to a person medical assistance whether the facility admits the person or refers the person to another facility.

Sec. 3.02 [~~2.01~~]. MAGISTRATE ORDER FOR EMERGENCY APPREHENSION AND DETENTION. (a) Any adult person may execute an application for emergency detention for another adult or a minor. The application shall be in writing and shall state:

(1) that the applicant has reason to believe and does believe that the person is a chemically dependent person [~~suffers from alcoholism~~];

(2) that the applicant has reason to believe and does believe that the person evidences a substantial risk of serious harm to himself or others, which risk of harm shall be specified and described;

(3) that the applicant has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained;

(4) that the applicant's beliefs are based on specific recent behavior, overt acts, attempts, or threats, which shall be described in specific detail; and

(5) the relationship, if any, of the applicant to the person sought to be detained.

(b) The application may be accompanied by any relevant information.

(c) The application shall be presented personally to any judge or magistrate who shall examine it and may interview the applicant.

(d) The judge or magistrate shall deny the application unless he or she finds there is reasonable cause to believe that:

(1) the person is a chemically dependent person [~~suffers from alcoholism~~];

(2) the person evidences a substantial risk of serious harm to himself or others;

(3) the risk of harm is imminent unless the person is immediately restrained; and

(4) necessary restraint cannot be accomplished without emergency detention.

(e) If the judge or magistrate finds that the person meets all four criteria for emergency detention specified in Subsection (d) of this section, the judge or magistrate [~~he~~] shall issue a warrant for the immediate apprehension and transportation of the person to a [~~an approved~~] treatment facility [~~program~~], if one is readily available, or to another appropriate facility for a preliminary examination by a physician. The preliminary examination shall be conducted as soon as possible within 24 hours of the time of apprehension under this subsection or Section 3.01 of this Act. Copies of the application for warrant and the warrant itself shall be served as soon as possible on the person and [~~immediately~~] transmitted to the facility [~~program~~].

(f) On completion of the preliminary examination, the person shall be released unless the examining physician or the physician's designee provides a written opinion that the person meets the criteria stated in Subsection (d) of this section. A person not admitted following the preliminary examination shall be entitled to reasonably prompt return to the location of his apprehension or other suitable place, unless the person is arrested or objects to the return.

(g) The person so apprehended may be detained in custody for a period which shall not exceed 24 hours from the time the person is presented to the facility, unless an application for court-ordered treatment is filed and a written order for further detention is obtained under Section 4.04 of this Act. However, if the 24-hour period ends on a Saturday or Sunday, or a legal holiday, the period of detention shall end at 4 p.m. [~~12 noon~~] on the first succeeding business day.

(h) If extremely hazardous weather conditions exist or a disaster occurs, the presiding judge or magistrate may by written order made each day extend by an

additional 24 hours the period during which the person may be detained. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

Sec. 3.03 [~~2.02~~]. RELEASE FROM EMERGENCY DETENTION. If during the emergency detention period it is determined by the administrator of the facility [~~program~~] or the administrator's designee that the criteria set out in [~~Subsection (d) of~~] Section 3.02(d) [~~2.01~~] of this Act no longer apply, the person shall be released. Arrangements shall be made for the person's return to the location of apprehension or other suitable place, unless the person is arrested or objects to the return.

Sec. 3.04 [~~2.03~~]. RIGHTS OF PERSONS APPREHENDED FOR EMERGENCY DETENTION. (a) Each person apprehended or detained under this subtitle has the following rights:

(1) the right to be advised of the location of detention, the reasons for detention, and the fact that detention could result in a longer period of involuntary commitment;

(2) the right to contact an attorney of his or her own choosing with a reasonable opportunity to contact that attorney;

(3) the right to be transported back to the location of apprehension, or other suitable place, if not admitted for emergency detention, unless he is arrested or objects to the return;

(4) the right to be released if the administrator of the program determines that any of the four criteria for emergency detention set out in [~~Subsection (d) of~~] Section 3.02(d) [~~2.01~~] of this Act no longer apply; and

(5) the right to be advised that communications to a chemical dependency [~~an alcoholism~~] treatment professional may be used in proceedings for further detention.

(b) Each person apprehended or detained under this title shall be advised within 24 hours of admission, orally and in writing, in simple, nontechnical terms, of the rights of patients provided by this section.

Sec. 3.05. INFORMATION TO BE PROVIDED ON ADMISSION. (a) If a person is accepted for treatment under Section 3.01 or 3.02 of this Act, the personnel of the treatment facility shall immediately advise the person in simple, nontechnical terms that:

(1) the person may be detained for treatment for not more than 24 hours after the hour of the initial detention unless an order for further detention is obtained;

(2) if the administrator finds that the statutory criteria for emergency detention no longer apply, the administrator shall release the person;

(3) not later than the 24th hour after the hour of the initial detention, the facility administrator may file in a county or district court a petition to have the person committed for court-ordered treatment under Subtitle C of this title;

(4) if the administrator files a petition for court-ordered treatment, the person is entitled to a judicial probable cause hearing not later than the 72nd hour after the hour on which detention begins under an order of protective custody to determine whether the person should remain detained in the facility;

(5) when the application for court-ordered services is filed, the person has the right to have counsel appointed if the person does not have an attorney;

(6) the person has the right to communicate with counsel at any reasonable time and to have assistance in contacting the counsel;

(7) anything the person says to the personnel of the treatment facility may be used in making a determination relating to detention, may result in the filing of a petition for court-ordered treatment, and may be used at a court hearing;

(8) the person is entitled to present evidence and to cross-examine witnesses who testify on behalf of the petitioner at a hearing;

(9) the person may refuse medication unless there is an imminent likelihood of serious physical injury to the person or others if the medication is refused;

(10) beginning on the 24th hour before a hearing for court-ordered treatment, the person may refuse to take medication unless the medication is necessary to save the person's life; and

(11) the person is entitled to request that a hearing be held in the county of which the person is a resident, if within the state.

(b) The personnel of the treatment facility shall provide the information required by Subsection (a) of this section to the person orally and in writing.

SUBTITLE C [~~B~~]. COURT-ORDERED TREATMENT

Sec. 4.01 [~~3.01~~]. COURT IN WHICH PROCEEDINGS TO BE HELD. (a) A proceeding pursuant to this title shall be held in a constitutional county court, a statutory county court having probate jurisdiction, or a statutory probate court in the county in which the proposed patient resides, is found, or is receiving court-ordered treatment or treatment under Section 3.01 of this Act when the application is filed unless otherwise specifically designated.

(b) If the hearing is to be held in a constitutional county court and the judge of the court is not a licensed attorney, the proposed patient may request that the proceeding be transferred to a statutory court having probate jurisdiction or to a district court. If a request for transfer is filed under this subsection, the county judge shall transfer the proceeding and the receiving court shall hear the proceeding as if the proceeding had been originally filed with that court.

(c) The commitment of a juvenile under this subtitle shall be heard in a district court or statutory court having juvenile jurisdiction or probate jurisdiction. The commitment of a juvenile under Subtitle D of this title shall be heard only in a court having juvenile jurisdiction [~~the statutory or constitutional court of the county exercising the jurisdiction of a probate court in alcoholism matters~~].

Sec. 4.02 [~~3.02~~]. APPLICATION FOR COURT-ORDERED TREATMENT. (a) A sworn application for court-ordered treatment may be filed by any adult person, or by the county or district attorney, with the county clerk in the county in which the proposed patient resides, [~~or in which the proposed patient~~] is found, or [~~in which the patient~~] is receiving treatment services by court order or under Section 3.01 of this Act. However, on request of the proposed patient or the proposed patient's [~~his~~] attorney, the court may in its discretion for good cause shown transfer the application to the county of the proposed patient's residence, if not initially filed there. Only the county or district attorney may file an application without an accompanying certificate of medical examination for chemical dependency.

(b) The application must be in writing and must state the following based on the information and belief of the applicant:

(1) the name and address of the proposed patient, including county of residence, if known [~~in this state~~];

(2) that the proposed patient is a chemically dependent person who [~~suffers from alcoholism and as a result, the person~~]:

(A) is likely to cause serious harm to himself or others; or

(B) will continue to suffer abnormal mental, emotional, or physical distress, will continue to deteriorate in ability to function independently if not treated, and is unable to make a rational and informed choice as to whether or not to submit to treatment; and

(3) that the proposed patient is not charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person

(not including a juvenile alleged to be a child engaged in delinquent conduct or conduct indicating a need for supervision as defined in Section 51.03, Family Code).

(c) The application shall be styled using the proposed patient's initials and not the full name.

(d) On the filing of an application, the court shall set a date for the hearing on the merits to be held within 14 days after the date on which the application is filed. The hearing may not be held within the first three days after the application is filed if the proposed patient or his attorney objects. The court may grant one or more continuances of the hearing on proper motion by either party and for good cause shown or by agreement of the parties. The hearing must be held not later than the 30th day after the date on which the original application is filed. Immediately after the court sets the date for the hearing, the clerk shall give written notice of the hearing and a copy of the application to the proposed patient and the proposed patient's attorney in the manner the court directs. The court shall appoint an attorney to represent the proposed patient unless the proposed patient retains an attorney of the proposed patient's own choosing. If the proposed patient is a minor, the court shall appoint an attorney ad litem, regardless of the ability of the proposed patient or the proposed patient's family to afford an attorney. The court shall allow a court-appointed attorney a reasonable fee for services to be taxed as costs of the court.

Sec. 4.03. CERTIFICATE OF MEDICAL EXAMINATION FOR CHEMICAL DEPENDENCY. (a) Before a hearing on court-ordered treatment may be held, there must be on file with the court two certificates of medical examination for chemical dependency completed by physicians who have examined the proposed patient within 30 days preceding the date on which the final hearing is held. At least one of the physicians must be a psychiatrist if one is available in the county.

(b) The court may appoint the necessary physicians to examine the proposed patient and to file the certificates with the court if the certificates of medical examination for chemical dependency are not filed with the application. The court may order the proposed patient to submit to the examinations and may issue a warrant directing a peace officer to take the proposed patient into custody for the examinations.

(c) The examining physician shall date and sign the certificate and shall state in the certificate:

(1) the name and address of the examining physician;

(2) the name and address of the proposed patient;

(3) the date and place of the examination;

(4) the period, if any, during which the proposed patient has been under the examining physician's care;

(5) an accurate description of the treatment, if any, given by or administered under the direction of the examining physician; and

(6) the examining physician's opinion and the detailed basis for that opinion concerning whether the proposed patient is a chemically dependent person and:

(A) is likely to cause serious harm to himself;

(B) is likely to cause serious harm to others; or

(C) will continue to suffer abnormal mental, emotional, or physical distress and will continue to deteriorate in ability to function independently if not treated, and is unable to make a rational and informed choice as to whether or not to submit to treatment.

Sec. 4.04. ORDER OF PROTECTIVE CUSTODY. (a) A motion for an order of protective custody may be filed only in the court in which an application for court-ordered treatment is pending. The motion may be filed by the county or

district attorney or on the court's own motion. (b) The motion must state that the judge or county or district attorney has reason to believe and does believe that the proposed patient meets the criteria for protective custody prescribed by this section. The judge or county or district attorney may base his belief on:

(1) the representations of a credible person;

(2) the proposed patient's conduct; or

(3) the circumstances under which the proposed patient is found.

(c) The motion must be accompanied by a certificate of medical examination for chemical dependency prepared by a physician who has examined the proposed patient within five days of the filing of the motion.

(d) The judge of the court in which the application is pending may designate a magistrate to issue orders of protective custody in the judge's absence.

(e) The judge or designated magistrate may issue an order of protective custody if the judge or magistrate determines:

(1) that a physician has stated his opinion and the detailed basis for his opinion that the proposed patient is a chemically dependent person; and

(2) the proposed patient presents a substantial risk of serious harm to himself or others if not immediately restrained before the hearing.

(f) The determination that the proposed patient presents a substantial risk of serious harm may be demonstrated by the proposed patient's behavior or by evidence that the proposed patient cannot remain at liberty. The judge or magistrate may base the determination that the proposed patient meets the criteria prescribed by this subsection on the application and certificate. The judge or magistrate must determine that the conclusions of the applicant and certifying physician are adequately supported by the information provided if only the application and certificate are considered. The judge or magistrate may take additional evidence if the judge or magistrate concludes that a fair determination of the matter cannot be made after considering only the application and certificate.

(g) The judge or magistrate may issue an order of protective custody for a proposed patient who is charged with a criminal offense if the proposed patient meets the requirements of this section and the head of the facility designated to detain the proposed patient agrees to the detention.

(h) The order of protective custody shall direct a peace officer or other designated person to take the proposed patient into protective custody and immediately transport the proposed patient to a treatment facility or other suitable place for detention. The proposed patient shall be detained until a probable cause hearing is held under Section 4.05 of this Act.

Sec. 4.05. PROBABLE CAUSE HEARING. (a) The court shall set a probable cause hearing to determine if probable cause exists to believe that the proposed patient presents a substantial risk of serious harm to himself or others if not restrained until the hearing on the application. The hearing must be held within 72 hours of the signing of an order of protective custody unless the right to a hearing is waived by the proposed patient. If that 72-hour period ends on a Saturday, Sunday, or legal holiday, the probable cause hearing shall be held on the first succeeding business day. The judge or magistrate may postpone the hearing each day for an additional 24 hours if the judge or magistrate declares that an extreme emergency exists because of extremely hazardous weather conditions or on the occurrence of a disaster that threatens the safety of the proposed patient or another essential party to the hearing.

(b) The probable cause hearing shall be held before a magistrate or, at the discretion of the presiding judge, before a master appointed by the presiding judge. A master is entitled to reasonable compensation. At the hearing, the proposed patient and the proposed patient's attorney are entitled to an opportunity to appear and present evidence on any allegation or statement in the certificate of medical

examination for chemical dependency. The magistrate or master may consider any evidence. The state may prove its case on the certificate.

(c) If after the hearing the magistrate or master determines that probable cause does not exist to believe that the proposed patient presents a substantial risk of serious harm to himself or others, the magistrate or master shall order the proposed patient's release.

(d) If the magistrate or master determines that probable cause does exist to believe that the proposed patient presents a substantial risk of serious harm to himself or others such that the proposed patient cannot be at liberty pending the hearing on court-ordered treatment, the magistrate shall order the proposed patient detained until the hearing on the court-ordered treatment or until the administrator of the facility determines that the proposed patient no longer meets the criteria for detention under this section, whichever occurs first.

(e) If detention is ordered under Subsection (d) of this section, the magistrate or master shall arrange for the proposed patient to be returned to the treatment facility or other suitable place with a copy of the certificate of medical examination for chemical dependency, any affidavits or other material submitted as evidence in the hearing, and a notification of probable cause hearing prepared as prescribed by Subsection (f) of this section. A copy of the notification of probable cause hearing and the supporting evidence must also be filed with the court that entered the original order of protective custody.

(f) The notification of probable cause hearing shall read as follows:

(Style of Case)

NOTIFICATION OF PROBABLE CAUSE HEARING

On this the _____ day of _____, 19____, the undersigned hearing officer heard evidence concerning the need for protective custody of _____ (hereinafter referred to as proposed patient). The proposed patient was given the opportunity to challenge the allegations that (s)he presents a substantial risk of serious harm to self or others.

The proposed patient and his attorney _____
(attorney)
have been given written notice that the proposed patient was placed under an order of protective custody and the reasons for such order on _____.
(date of notice)

I have examined the certificate of medical examination for chemical dependency and _____.
(other evidence considered)
Based on this evidence, I find that there is probable cause to believe that the proposed patient presents a substantial risk of serious harm to himself (yes ____ or no ____) or others (yes ____ or no ____) such that (s)he cannot be at liberty pending final hearing because _____.
(reasons for finding; type of risk found)

Sec. 4.06. HEARING ON APPLICATION FOR COURT-ORDERED TREATMENT. (a) A hearing on court-ordered treatment must be before a jury unless the proposed patient and the proposed patient's attorney waive the right to a jury. The waiver may be filed at any time after the proposed patient is served with the application and receives notice of the hearing. The waiver of the right to a jury must be in writing, under oath, and signed and sworn to by the proposed patient and by the attorney appointed to represent the proposed patient or the attorney retained by the proposed patient.

(b) The proposed patient is entitled to have a hearing and to be present at the hearing, but the proposed patient or the proposed patient's attorney may waive either right.

(c) A hearing by the court may be held in any suitable place in the county. The hearing must be held in the county courthouse if the proposed patient or the proposed patient's attorney demands that location.

(d) The Texas Rules of Procedure and Texas Rules of Civil Evidence apply to a hearing held under this title unless the rules are inconsistent with this title. The hearing is on the record, and the state must prove each issue by clear and convincing eivdence.

(e) In addition to the rights prescribed by this Act, the proposed patient is entitled to:

(1) present evidence on the proposed patient's own behalf;

(2) cross-examine witnesses who testify on behalf of the applicant;

(3) view and copy all petitions and reports in the court file of the cause; and

(4) elect to have the hearing open or closed to the public.

(f) If the proposed patient admits the allegations of the application or if, at the hearing on the merits, the court or jury finds that the material allegations of the application have been proven by clear and convincing evidence, the court shall commit the proposed patient to a treatment facility approved by the commission to accept court commitments for a period not to exceed 90 days.

(g) If the court or jury fails to find by clear and convincing evidence that the proposed patient is a chemically dependent person and meets the criteria for court-ordered treatment, the court shall enter an order denying the application and discharging the proposed patient.

(h) The judge may, on request by the proposed patient, enter an order requiring the proposed patient to participate in a licensed outpatient treatment facility or services provided by a private licensed physician, psychologist, social worker, or professional counselor if the judge makes a finding that it is in the proposed patient's best interest to do so considering the proposed patient's impairment.

Sec. 4.07. MOTION FOR MODIFICATION OF ORDER FOR OUTPATIENT TREATMENT. (a) The court that entered an order requiring a patient to participate in outpatient care or services may set a hearing to determine if the order should be modified to specifically require inpatient treatment. The court may set the hearing on its own motion, at the request of the person responsible for the care or treatment, or at the request of any other interested person.

(b) The court shall appoint an attorney to represent the patient if a hearing is held. The patient shall be given notice of the matters to be considered at the hearing. The notice must comply with the requirements of Section 4.02 of this Act for notice before a hearing on court-ordered treatment.

(c) The hearing shall be held before the court, without a jury, and as prescribed by Section 4.06 of this Act. The patient shall be represented by an attorney and receive proper notice.

(d) This section applies only to a change in the general program of treatment that is a substantial deviation from the original program incorporated in the court's order.

Sec. 4.08. ORDER FOR TEMPORARY DETENTION. (a) The person responsible for a patient's court-ordered outpatient care or treatment or the head of the outpatient treatment facility in which the patient receives care or treatment shall file a sworn application for the patient's temporary detention before the modification hearing.

(b) The application must state the applicant's opinion and the detailed basis for the applicant's opinion that:

(1) the patient meets the criteria in Section 4.09 of this Act; and

(2) detention in an approved inpatient treatment facility is necessary to evaluate the appropriate setting for continued court-ordered services.

(c) The court shall base its decision on the application. The court may issue an order for temporary detention if the court finds that there is probable cause to believe that the opinions stated in the application are valid.

(d) The court shall appoint an attorney to represent the patient when the order for temporary detention is signed if the patient does not have an attorney.

(e) Not later than the 72nd hour after the hour on which the patient is detained, the court that issued the order of temporary detention shall provide to the patient and the patient's attorney a written notice that contains:

(1) a statement that the patient has been placed under an order for temporary detention;

(2) the reasons the order was issued; and

(3) the time and place of the modification hearing.

(f) The order for temporary detention shall direct a peace officer or other designated person to take the patient into custody and immediately transport the patient to the nearest appropriate approved inpatient treatment facility. The patient shall be transported to a suitable facility if an appropriate approved inpatient treatment facility is not available.

(g) A patient may be detained under an order for temporary detention for not more than 72 hours. The exceptions applicable to the 72-hour limitation for holding a probable cause hearing for an order of protective custody under Section 4.05(a) of this Act apply to detention under this section.

(h) The head of a facility shall immediately release a patient held under an order for temporary detention if the facility head does not receive notice that a modification hearing was held within the time limits prescribed by Subsection (g) of this section in which the patient's continued detention was authorized.

(i) A patient released from an inpatient treatment facility under Subsection (h) of this section continues to be subject to the terms of the order committing the person to an approved outpatient treatment facility if the order has not expired.

Sec. 4.09. ORDER OF MODIFICATION OF ORDER FOR OUTPATIENT SERVICES. (a) The court may modify an order for outpatient services at the modification hearing if the court determines that the patient continues to meet the applicable criteria for court-ordered treatment prescribed by this Act and that:

(1) the patient has not complied with the court's order; or

(2) the patient's condition has deteriorated to the extent that outpatient care or services are no longer appropriate.

(b) The court's decision to modify an order must be supported by at least one certificate of medical examination for chemical dependency signed by a physician who examined the patient not later than the seventh day before the date on which the hearing is held.

(c) A court that finds that the criteria prescribed by Subsection (a) have been met may:

(1) refuse to modify the order and may direct the patient to continue to participate in outpatient care or treatment in accordance with the original order;

(2) modify the order to incorporate a revised treatment program and to provide for continued outpatient care or treatment under the modified order, if a revised general program of treatment was submitted to and accepted by the court; or

(3) modify the order to provide for commitment to an approved treatment facility for inpatient care.

(d) A modified court order may not extend beyond the period prescribed for the original order.

Sec. 4.10. MODIFICATION OF ORDER FOR INPATIENT TREATMENT. (a) The head of a facility to which a patient is committed for

inpatient treatment may request that the court that entered the commitment order consider modifying the order to require the patient to participate in outpatient care or services.

(b) The facility head's request must explain in detail why the facility head is making the request. The request must be accompanied by a certificate of medical examination for chemical dependency signed by a physician who examined the patient during the preceding seven days.

(c) The patient shall be given notice of the request.

(d) The court must hold a hearing on the request if the patient or any other interested person demands a hearing. The court shall appoint an attorney to represent the patient at the hearing. The hearing shall be held before the court without a jury and as prescribed by Section 4.06 of this Act. The patient shall be represented by an attorney and receive proper notice.

(e) The court may consider and make its decision based on the request and the supporting certificate if a hearing is not requested.

(f) The court shall identify a person to be responsible for the outpatient care or services if the court determines that the order should be modified.

(g) The person responsible for the care or services must submit to the court a general program of the treatment to be provided. The program must be submitted within two weeks after the court enters the modified order. The program must be incorporated into the court order.

(h) A modified order may not extend beyond the term of the original order.

Sec. 4.11. OUTPATIENT SERVICES IN CERTAIN COUNTIES. (a) This section applies to a chemically dependent person who is a resident of a county with a population of more than 2.4 million, according to the most recent federal decennial census, and whose inpatient commitment is modified to an outpatient commitment or who is furloughed from an inpatient facility.

(b) The commission shall arrange and furnish alternative settings for outpatient care, treatment, and supervision in the person's county of residence. The services must be provided as close as possible to the patient's residence.

(c) A patient receiving services under this section shall report at least weekly to the person responsible for the patient's outpatient care and services.

(d) The person responsible for the patient's outpatient care or treatment shall notify the committing court of the patient's treatment plan and condition at least monthly until the end of the commitment period.

(e) This section expires August 31, 1991.

SUBTITLE D. CRIMINAL JUSTICE COMMITMENT

Sec. 5.01. COMMITMENT BY COURTS IN CRIMINAL PROCEEDINGS; ALTERNATIVE SENTENCING. (a) The judge of a court with jurisdiction of misdemeanor cases may remand the defendant to a treatment facility approved by the commission to accept court commitments for care and treatment not to exceed 90 days in lieu of incarceration or fine, if:

(1) the court or a jury has found the defendant guilty of an offense classified as a Class A or B misdemeanor;

(2) the court finds that the violation resulted from or was related to the defendant's chemical dependency; and

(3) a treatment facility approved by the commission to accept court commitments is available to treat the person and the facility agrees in writing to admit the defendant under this section.

(b) A defendant is not eligible for sentencing under this section if, in the opinion of the court, the defendant is mentally ill. An order of sentencing by the court is treated as a final conviction and an appeal from the order may be taken in the same manner as provided for appeals from any other judgment of that court.

(c) If a juvenile court finds that a child has engaged in delinquent conduct or conduct indicating a need for supervision resulting from or related to the child's chemical dependency, the court may remand the child to a treatment facility for care and treatment for not more than 90 days after the date on which the child is remanded if:

(1) a treatment facility approved by the commission to accept court commitments is available to treat the child; and

(2) the facility agrees in writing to receive the child under this section.

SUBTITLE E. MISCELLANEOUS PROVISIONS

Sec. 6.01. FILING REQUIREMENTS. (a) Each application, petition, certificate, or other paper permitted or required to be filed in the county court under this Act must be filed with the county clerk of the proper county.

(b) The county clerk shall file each paper and endorse it with:

(1) the date on which the paper is filed;

(2) the docket number; and

(3) the clerk's official signature, stamp, or seal.

(c) A person may initially file a paper with the county clerk by the use of reproduced, photocopied, or electronically transmitted paper if the person files the original signed copies of the paper with the clerk not later than the third working day after the date on which the initial filing is made.

Sec. 6.02. INSPECTION OF COURT RECORDS. (a) Each paper in a docket for commitment proceedings in the county clerk's office, including the docket book, indexes, and judgment books, is a public record of a private nature.

(b) A paper may be used, inspected, or copied only under a written order issued by the:

(1) county judge;

(2) judge of a court that has probate jurisdiction; or

(3) judge of a district court having jurisdiction in the county.

(c) A judge may not issue an order under Subsection (b) of this section unless the judge enters a finding that:

(1) the use, inspection, or copying is justified and in the public interest; or

(2) the paper is to be released to the person to whom it relates or to a person designated in a written release signed by the person to whom the paper relates.

(d) In addition to the finding required by Subsection (c) of this section, if a law relating to confidentiality of mental health information or physician-patient privilege applies, the judge must find that the reasons for the use, inspection, or copying fall within the statutory exemptions.

(e) The papers shall be released to an attorney representing the proposed patient in a proceeding held under this title.

(f) This section does not affect access of law enforcement personnel to necessary information in the execution of a writ or warrant.

Sec. 6.03. REPRESENTATION OF STATE. (a) The county attorney shall represent the state in a hearing on court-ordered treatment held under this title.

(b) The district attorney shall represent the state in a county that does not have a county attorney.

Sec. 6.04. HOSPITALIZATION OUTSIDE TREATMENT FACILITY. (a) If, in the opinion of a licensed physician, a person who is receiving court-ordered treatment in a treatment facility requires immediate medical care and treatment in a hospital, the person may be transferred to a hospital.

(b) The hospital may, with the person's consent, provide any necessary medical treatment, including surgery. The hospital may provide medical treatment without the person's consent to the extent provided by other law.

(c) If the order for court-ordered treatment has not expired at the completion of the hospital treatment, the person shall be returned to the treatment facility.

(d) An order for court-ordered treatment may be renewed while the person is in the hospital.

Sec. 6.05. RENEWAL OF ORDER FOR COURT-ORDERED TREATMENT. (a) A court may renew an order for court-ordered treatment entered under Subtitle C of this title.

(b) If an applicant has reasonable cause to believe that a person is still chemically dependent and that, because of the chemical dependency, the person is likely to cause serious physical harm to himself or others, the applicant may file an application for renewal of the original order. The application must comply with the requirements of Section 4.02 of this Act. The applicant must file the application not later than the 14th day before the date on which the previous order will expire.

(c) The application must be accompanied by two new certificates of medical examination for chemical dependency. The certificates must comply with the requirements of Section 4.03 of this Act.

(d) An application for renewal is treated as an original application for court-ordered treatment. The provisions of Subtitle C of this title relating to notice, hearing procedure, and the proposed patient's rights apply to the application for renewal.

(e) If the proposed patient admits the allegations of the application or if, at the hearing on the merits, the court or jury finds that the material allegations of the application have been proven by clear and convincing evidence, the court shall commit the proposed patient to an approved treatment program for an additional period not to exceed 90 days. However, if the court or jury fails to find by clear and convincing evidence that the proposed patient is a chemically dependent person and meets the criteria for court-ordered treatment, the court shall enter an order denying the application and discharging the proposed patient. [~~, which hearing must be held not less than five days and no more than 14 days from the filing of the application. Immediately after the judge sets the date for the hearing, the expert shall give written notice of the hearing and a copy of the application to the proposed patient and his or her attorney in such manner as the court shall direct. The court may proceed to hear the cause at the stated time, with or without the presence of the proposed patient and with or without an answer by the proposed patient, provided the notice is received at least three days prior to the hearing and provided the proposed patient is represented by an attorney if the right of legal counsel is not waived. If the proposed patient is not represented by an attorney of his own choosing, the court shall appoint an attorney. The court shall inform relatives of the proposed patient and other persons to appear at the hearing to give evidence in the cause. The judge may, in his discretion or on request, require the proposed patient to be examined by a physician and the results of the examination shall be considered by the court at the hearing on the application for commitment.~~

[~~(e) The judge may order any peace officer or other designated person to take the proposed patient to an approved facility or other suitable place for detention pending the order of the court if:~~

[~~(1) a certificate of medical examination for alcoholism is filed showing that the proposed patient has been examined within five days of the filing of the certificate; and~~

[~~(2) the certificate states the opinion of the examining physician that the proposed patient is an alcoholic and:~~

[~~(A) is likely to cause serious harm to himself or others if not immediately restrained; or~~

[~~(B) will continue to suffer abnormal mental, emotional, or physical distress and will continue to deteriorate in ability to function~~

~~independently if not treated, and that the proposed patient is unable to make a rational and informed choice as to whether or not to submit to treatment.~~

~~[(f) If the proposed patient is detained under Subsection (e) of Section 3.02 of this Act, the court shall set a probable cause hearing to be held within 72 hours of the time detention begins, unless the right to hearing is waived by the proposed patient. However, if that 72-hour period ends on a Saturday or Sunday or a legal holiday, the probable cause hearing shall be held on the first succeeding business day.~~

~~[(g) If the proposed patient admits the allegations of the application or if, at the hearing on the merits, the court finds that the material allegations of the application have been proven by clear and convincing evidence, it shall commit the patient to an approved treatment program for a period not to exceed 90 days.~~

~~[(h) Except as provided by this subsection, if the Texas Department of Mental Health and Mental Retardation has designated a single portal authority for the area, the court may not directly commit a person to a state mental health facility, but instead may order the person committed to a program licensed by the commission, to a federal hospital, or to a facility operated by the single portal authority. If the single portal authority lacks the local resources to care for a patient, the authority may transfer the patient to a state mental health facility or, at the request of the authority, the court may commit the patient directly to a state mental health facility.]~~

Sec. 6.06 [~~3.03~~]. APPEAL. (a) All appeals from orders requiring court-ordered treatment shall be filed in the court of appeals for the county in which the order was entered.

(b) Notice of appeal shall be filed within 10 days from the date any such order is signed.

(c) When the notice of appeal is filed, the clerk shall immediately send a certified transcript of the proceedings to the court of appeals.

(d) Pending the appeal, the trial judge in whose court the cause is pending may stay the order and release the person from custody if the judge is satisfied that the person does not meet the criteria for protective custody pursuant to this Act. The judge may require an appearance bond in an amount to be determined by the court.

(e) These cases shall be advanced on the docket and given a preference setting over all other cases in the court of appeals and the supreme court. The courts may suspend all rules concerning the time for filing briefs and the docketing of cases.

Sec. 6.07 [~~3.04~~]. HABEAS CORPUS. This Act does not abridge the right of any person to a writ of habeas corpus.

Sec. 6.08. PASS OR FURLOUGH FROM INPATIENT CARE. (a) The facility head may permit a patient admitted to the facility under an order for inpatient services to leave the facility under a pass or furlough. A pass authorizes the patient to leave the facility for not more than 72 hours. A furlough authorizes the patient to leave for a longer period. The pass or furlough may be subject to specified conditions. The facility head shall notify the court that issued the commitment order when a patient is furloughed.

(b) The head of a facility to which a patient was admitted for court-ordered inpatient services may secure the patient's detention and return to the facility by:

(1) signing a certificate authorizing the patient's detention and return; or

(2) filing the certificate with a magistrate and requesting the magistrate to order the patient's detention and return.

(c) A magistrate may issue an order directing a peace or health officer to take a patient into custody and return the patient to the facility if the facility head files the certificate as prescribed by this section. The facility head may sign or file the certificate if the facility head reasonably believes that:

(1) the patient is absent from the facility without authority;

(2) the patient has violated the terms of a pass or furlough; or

(3) the patient's condition has deteriorated to the extent that his continued absence from the facility under a pass or furlough is inappropriate.

(d) A peace or health officer shall take the patient into custody and return the patient to the facility as soon as possible if the patient's return is authorized by the facility head's certificate or the court order. The peace or health officer may take the patient into custody without having the certificate or court order in the officer's possession.

Sec. 6.09. REVOCATION OF FURLOUGH. (a) A furlough may be revoked only after an administrative hearing held in accordance with commission rules. The hearing must be held not later than the 72nd hour after the patient is returned to the facility.

(b) A hearing officer shall conduct the hearing. The hearing officer may be a mental health or chemical dependency professional if the person is not directly involved in treating the patient.

(c) The hearing is informal and the patient is entitled to present information and argument.

(d) The hearing officer may revoke the furlough if the officer determines that the revocation is justified under Section 6.08(c)(1) or (2) of this Act.

(e) A hearing officer who revokes a furlough shall place in the patient's file:

(1) a written notation of the decision; and

(2) a written explanation of the reasons for the decision and the information on which the hearing officer relied.

(f) The patient shall be permitted to leave the facility under the furlough if the hearing officer determines that the furlough should not be revoked.

Sec. 6.10 [~~3.05~~]. DISCHARGE FROM COURT-ORDERED TREATMENT. (a) The administrator of a facility to which a person has been committed for treatment shall discharge the person [~~patient~~] on expiration of the court order.

(b) The administrator of a facility may, at any time prior to the expiration of an order for treatment, discharge the person [~~patient~~] upon his or her determination that the person [~~patient~~] no longer meets the criteria for court-ordered treatment. A discharge under this subsection terminates the court order. Any person discharged under this subsection may not again be compelled to submit to involuntary treatment except pursuant to a new order entered in accordance with the provisions of this Act.

(c) The administrator of a facility to which the patient was committed for inpatient services shall consider before discharging the patient if the patient should receive additional court-ordered care or services on an outpatient basis in accordance with:

(1) a furlough under Section 6.08 of this Act; or

(2) a modified order under Section 4.10 of this Act that directs the patient to participate in outpatient mental health services.

(d) [~~(c)~~] On discharging a person under this section, the administrator of the facility shall prepare a certificate of discharge and file it with the court that entered the order.

Sec. 6.11 [~~3.06~~]. COSTS OF COMMITMENT AND SUPPORT. (a) The laws relating to payment of costs of commitment and support, maintenance, and treatment and to securing reimbursement for those [~~of~~] actual costs that are applicable to court-ordered mental health, probation, or parole services apply to each item of expense incurred by the state or the county in connection with the commitment, care, custody, treatment, and rehabilitation of a person receiving care and treatment under this Act. A county that enters an order of commitment or

detention under this Act is liable for payment of the costs of any proceedings related to that order, including:

(1) court-appointed attorney's fees;

(2) physician examination fees;

(3) compensation for language or sign interpreters;

(4) compensation for masters; and

(5) expenses of transporting the patient to a hearing or to a treatment facility.

(b) For any cost actually paid that relates to an order of commitment or detention, the county or state is entitled to reimbursement from the patient, the applicant, or any person or estate liable for the patient's support while in a treatment facility. On motion of the county or district attorney, or on the court's own motion, the court may require an applicant to file a cost bond with the court. The state shall pay the costs of transporting home a discharged patient or of returning to a treatment facility a patient absent without permission unless the patient or a person responsible for the patient is able to pay the costs.

(c) The county or the state may not pay any costs for a patient committed to a private hospital unless authorized by the commissioners court of the county or the commission, as appropriate.

Sec. 6.12. IMMUNITY AND PENALTIES. (a) A person who participates in the examination, certification, apprehension, custody, transportation, detention, commitment, or discharge of a proposed patient or in the performance of any act required or authorized by this Act is not civilly or criminally liable for that action if the person acts in good faith, reasonably, and without malice.

(b) A physician performing a medical examination or providing information to a court in a court proceeding under this Act is considered an officer of the court and is not civilly or criminally liable for the examination or testimony when acting without malice.

(c) A person commits an offense if the person intentionally causes, conspires with another person to cause, or assists another to cause the unwarranted commitment of a person to a treatment facility. A person commits an offense if the person knowingly violates this Act. An offense under this section is a Class A misdemeanor. The appropriate district or county attorney shall prosecute violations of this Act. [~~for court-ordered mental health services apply to each item of expense incurred by the state in connection with the commitment, care, custody, treatment, and rehabilitation of a person receiving care and treatment under this Act.~~

[~~(b) Any person admitted to an approved treatment program who has sufficient funds shall be required to pay for his or her maintenance at the same rate charged other patients for maintenance at such facility. All of the provisions of Chapter 152, Acts of the 45th Legislature, Regular Session, 1937 (Article 3196a, Vernon's Texas Civil Statutes), are applicable to any person admitted to a state hospital under the provisions of this Act.~~

[~~Sec. 3.07. COMMITMENT BY COURTS IN CRIMINAL PROCEEDINGS; ALTERNATIVE SENTENCING. (a) The judge of any court having jurisdiction of misdemeanor cases may remand the defendant to an approved treatment program for care and treatment not to exceed 90 days, in lieu of incarceration or fine, if:~~

[~~(1) the court or a jury has found the defendant guilty of an offense;~~

[~~(2) the court finds that such violation resulted from or was related to the defendant's abuse of alcohol; and~~

[~~(3) an approved treatment program, as defined in this Act, is available to treat the person, and the facility agrees in writing to admit the defendant under this section.~~

[~~(b) A defendant who, in the opinion of the court, is mentally ill is not eligible for sentencing under this section. An order of sentencing by the court is treated as~~

~~a final conviction and an appeal from the order may be taken in the same manner as provided for appeals from any other judgment of that court.~~

~~[(c) If a juvenile court finds that a child has engaged in delinquent conduct or conduct indicating a need for supervision resulting from or related to the child's abuse of alcohol or drugs, the court may remand the child to an approved treatment program for care and treatment for not more than 90 days after the date on which the child is remanded if:~~

~~[(1) an approved treatment program is available to treat the child, and~~

~~[(2) the program agrees in writing to receive the child under this section.~~]

SECTION 12. The Texas Alcohol and Drug Abuse Services Act (Article 5561c-2, Vernon's Texas Civil Statutes) is amended by adding Title 3 to read as follows:

TITLE 3. VOLUNTARY TREATMENT OR REHABILITATION

Sec. 7.01. VOLUNTARY ADMISSION OF ADULT. A facility may admit an adult who requests admission for emergency or nonemergency treatment or rehabilitation if:

(1) the facility is a treatment facility licensed by the commission to provide the necessary services or is a facility licensed or operated by the Texas Department of Mental Health and Mental Retardation; and

(2) the admission is appropriate under the facility's admission policies.

Sec. 7.02. VOLUNTARY ADMISSION OF MINOR. (a) A facility may admit a minor for treatment and rehabilitation if:

(1) the facility is a treatment facility licensed by the commission to provide the necessary services to minors or is a facility licensed or operated by the Texas Department of Mental Health and Mental Retardation;

(2) the admission is appropriate under the facility's admission policies; and

(3) the admission is requested by:

(A) a parent or other person authorized to consent to medical treatment of a minor under Section 35.01, Family Code; or

(B) the minor, without parental consent, under Section 35.03, Family Code.

(b) The admission of a minor under Subsection (a) of this section is considered a voluntary admission.

Sec. 7.03. DISCHARGE OF VOLUNTARY PATIENT. (a) If a voluntary patient requests in writing to be released from a facility, the facility shall release the person within a reasonable time not to exceed 96 hours unless:

(1) the person files a written withdrawal of the request;

(2) an application for court-ordered treatment or emergency detention is filed and the person is detained in accordance with Subtitle B, C, or D, Title 2, of this Act; or

(3) the patient is a minor admitted with the consent of the parent, guardian, or conservator, and that person objects in writing to the release of the minor after consulting with facility personnel.

(b) Subsection (a) of this section applies to a minor admitted under Section 7.02(a) of this Act if the request for release is made in writing to the facility by the person who requested the initial admission.

Sec. 7.04. APPLICATION FOR COURT-ORDERED TREATMENT DURING VOLUNTARY INPATIENT CARE. A person may not file an application for court-ordered treatment for a person receiving voluntary care under this title unless:

(1) a request for release of the person has been filed; or

(2) in the opinion of the head of the facility, the person meets the criteria for court-ordered treatment and:

(A) is absent without authorization; or

(B) refuses or cannot consent to appropriate and necessary treatment.

Sec. 7.05. PATIENT RIGHTS AND CONFIDENTIALITY. The provisions of Subtitle A, Title 2, of this Act relating to patient rights and confidentiality apply to a person admitted for voluntary treatment under this title.

SECTION 13. Section 42.08(b), Penal Code, is amended to read as follows:

(b) In lieu of arresting an individual who commits an offense under Subsection (a) of this section, a peace officer may release an individual if:

(1) the officer believes detention in a penal facility is unnecessary for the protection of the individual or others; and

(2) the individual:

(A) is released to the care of an adult who agrees to assume responsibility for the individual; or

(B) verbally consents to voluntary [~~alcohol or drug~~] treatment for chemical dependency in a program in [~~approved as~~] a treatment facility licensed and approved by the Texas Commission on Alcohol and Drug Abuse [~~Alcoholism~~], and the program admits the individual for treatment.

SECTION 14. Section 5.11, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5.11. DESIGNATION FOR FEDERAL FUNDS. The Texas Commission on Alcohol and Drug Abuse is hereby designated as the single state agency to administer, apply for, and disburse all federal funds for chemical dependency education, prevention, intervention, treatment, and rehabilitation [~~disperse funds under Public Law 92-255, the Drug Abuse Office and Treatment Act of 1972~~] and is given all powers necessary to receive these funds.

SECTION 15. The following are repealed:

(1) Chapter 398, Acts of the 52nd Legislature, 1951 (Article 3196c, Vernon's Texas Civil Statutes);

(2) Chapter 154, Acts of the 55th Legislature, Regular Session, 1957 (Article 3196c-1, Vernon's Texas Civil Statutes);

(3) Chapter 37, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4447i, Vernon's Texas Civil Statutes);

(4) Section 5, Chapter 618, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4476-11, Vernon's Texas Civil Statutes);

(5) R. B. McAllister Drug Treatment Program Act (Article 4476-15a, Vernon's Texas Civil Statutes); and

(6) Chapter 543, Acts of the 61st Legislature, Regular Session, 1969 (Article 5561c-1, Vernon's Texas Civil Statutes).

(7) Alcohol and Substance Abuse Services Oversight Act, Chapter 956, Acts of the 70th Legislature, Regular Session, 1987 (Article 5561c-2a, Vernon's Texas Civil Statues).

SECTION 16. This Act takes effect September 1, 1989, and applies to a person committed before, on, or after that date or to a person whose commitment is sought but who has not been committed before that date.

SECTION 17. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Local and Consent Calendars
Committee Amendment No. 1 - Polumbo

Amend **C.S.S.B. 1533** as follows:

(1) On page 12, strike lines 4-23.

(2) On page 23, line 27, strike the the sentence which reads as follows: "At least one of the physicians must be a psychiatrist if one is available in the county.".

(3) On page 54, add new Section 16 to read as follows and renumber existing Section 16 and all subsequent sections accordingly:

SECTION 16. If **H.B. 2706** revising Article 4476-11 relating to narcotic treatment programs and this Act both pass during the Regular Session of the 71st Legislature, 1989, **H.B. 2706** shall prevail over subdivision (4) of Section 15 of this Act irrespective of the order in which the bills pass, and subdivision (4) of Section 15 of this Act shall be null and void and of no effect.

Local and Consent Calendars
Committee Amendment No. 2 - Polumbo

Amend **C.S.S.B. 1533** by adding new Sections 1, 2, and 3 to read as follows and renumbering the existing Sections 1, 2, and 3 and all subsequent Sections accordingly:

SECTION 1. Section 18, Texas Mental Health Code (Article 5547-18, Vernon's Texas Civil Statutes) is amended to read as follows:

Article 5547-18. LIABILITY. All persons acting in good faith, reasonably, and without negligence in connection with examination, certification, apprehension, custody, transportation, detention, treatment or discharge of any person or in the performance of any other act required or authorized by this code shall be free from all liability, civil or criminal, by reason of such action. Provided, however, that a physician [~~physicians~~] performing medical examinations and providing information to courts in any court proceeding held pursuant to this code or a physician providing information to peace officers to demonstrate the need for a person to be apprehended in an Emergency Detention under this code shall be considered an officer of the court and shall not be held liable for such examination or testimony when acting without malice. And, provided that physicians and in-patient mental health facilities shall not be liable for any discharge of a voluntary patient where a written request for release was filed and not withdrawn and where the patient or other person filing the written request for release is notified that they are assuming all responsibility for the patient upon discharge.

SECTION 2. Section 23, Texas Mental Health Code, (Article 5547-23, Vernon's Texas Civil Statutes), is amended by amending subsection (a) to read as follows:

(a) Request for Voluntary Admission of a person to an in-patient mental health facility as a voluntary patient shall be in writing and filed with the head of the mental health facility to which admission is sought and:

(1) shall be signed by the person, if the person is 16 years of age or older; or

(2) shall, if the person is under the age of 16 years be signed by the parent, or the managing conservator if one has been appointed, or by the guardian if one has been appointed; and

(3) shall state that the person will voluntarily remain in the mental health facility until the person is discharged and that the person is consenting to the diagnosis, observation, care and treatment provided [~~submit himself to the custody of the in-patient mental health facility for diagnosis, observation, care and treatment~~] until he is discharged or until the expiration of 96 hours after written

request for his release is filed by the patient or other person responsible for the patient's admission with the head of the mental health facility. The patient or other person filing a request for release of the patient shall be notified that they assume all responsibility for the patient upon discharge.

SECTION 3. Section 25, Texas Mental Health Code (Article 5547-25, Vernon's Texas Civil Statutes), is amended by amending subsection (a) to read as follows:

(a) Every voluntary patient in an in-patient mental health facility has the following rights:

(1) the right to leave the mental health facility within 96 hours, after filing with the head of the mental health facility or his designee a written request for release, signed by the patient or other person responsible for the patient's admission [~~someone on his behalf and with his consent,~~] unless prior to the expiration of the 96-hour period:

(A) written withdrawal of the request for release is filed; or

(B) an application for court-ordered mental health services or emergency detention is filed and the patient is detained in accordance with the provisions of this code;

(2) the right of habeas corpus, which is not affected by admission to a mental health facility as a voluntary patient;

(3) the right to retain civil rights and legal capacity, which are not affected by admission to a mental health facility as a voluntary patient;

(4) the right to periodic review of his need for continued in-patient treatment;

(5) the right not to have an application for court-ordered mental health services filed while he is a voluntary patient unless in the opinion of the head of the facility he meets the criteria for court-ordered services and he is either absent without authorization or he refuses or is unable to consent to appropriate and necessary psychiatric treatment;

(6) the rights of patients set forth in Sections 80 and 81 of this code; and

(7) the right, within 24 hours of admission, to be informed orally, in simple, nontechnical terms of the above-listed rights. In addition, the person shall be informed in writing of these same above-listed rights, in his primary language if possible. The above-listed rights shall be communicated to a hearing and/or visually impaired person through any means reasonably calculated to communicate these rights. The same explanation shall be given to the parent, guardian, or managing conservator of a minor.

Local and Consent Calendars
Committee Amendment No. 3 - G. Thompson

Amend **C.S.S.B. 1533** on page 30, line 8 as follows:

Between the period and "The" insert the following: Judges who hold hearings in hospitals or other places other than the county courthouse may be paid a reasonable annual salary supplement in addition to their regular compensation in an amount to be determined by the commissioners' court.

The amendments were read.

On motion of Senator Green and by unanimous consent, the Senate concurred in the House amendments to **S.B. 1533** viva voce vote.

SENATE BILL 1744 WITH HOUSE AMENDMENT

Senator Green called **S.B. 1744** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment - Cain

Amend **S.B. 1744** in the following manner: On page 3, line 7, insert the between of and authority.

The amendment was read.

Senator Green moved to concur in the House amendment to **S.B. 1744**.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Parker, Parmer, Washington.

SENATE JOINT RESOLUTION 53 WITH HOUSE AMENDMENTS

Senator Haley called **S.J.R. 53** from the President's table for consideration of the House amendments to the resolution.

The Presiding Officer laid the resolution and the House amendments before the Senate.

Floor Amendment No. 1 - Grusendorf

Amend **S.J.R. 53** as follows:

At line 11, strike "aiding" and substitute "making loans to or purchasing the bonds of"

Floor Amendment No. 2 - Schoolcraft

Amend **S.J.R. 53** on line 17, after "paid." by inserting "The amount of bonds authorized hereunder shall not exceed 750 million dollars or a higher amount authorized by a two-thirds record vote of both houses of the Legislature."

Floor Amendment No. 3 - Culberson

Amend **S.J.R. 53** as follows:

(1) On page 1, line 11, between "districts and the period, insert "for the purpose of acquisition, construction, or improvement of instructional facilities including all furnishings thereto."

(2) On page 1, at the end of Section 5(b), add "If the proceeds of bonds issued by the state are used to provide a loan to a school district and the district becomes delinquent on the loan payments, the amount of the delinquent payments shall be offset against state aid to which the district is otherwise entitled."

The amendments were read.

Senator Haley moved to concur in the House amendments to **S.J.R. 53**.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Parker, Parmer, Washington.

SENATE BILL 951 WITH HOUSE AMENDMENTS

Senator Haley called **S.B. 951** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment No. 1 - Colbert

Amend **S.B. 951** as follows:

(1) On page 13, line 7, strike "and".

(2) On page 13, between lines 7 and 8, insert the following:

(7) has the ability to repay the aid granted, considering the district's tax base and outstanding debts; and

(3) On page 13, line 8, strike "(7)" and substitute "(8)".

Amendment No. 2 - Grusendorf

Amend **S.B. 951** as follows:

(1) Insert a new subsection (1) of section 2 of the act between lines 11 and 12 on page 1 as follows and renumber the following subsections of section 2 of the act appropriately:

"(1) "Aid" means the making of loans to a qualifying district or purchasing bonds issued by a qualifying district."

(2) Strike section 3 of the act at line 10 of page 2 through line 3 of page 3 and substitute the following:

"Sec. 3. FINDINGS. The Legislature finds that it is appropriate to make loans to qualifying districts and to purchase bonds issued by qualifying district for the purpose of aiding those districts in the acquisition, construction, renovation, or improvement of instructional facilities and capital assets."

(3) Insert "or refunding" between "sale" and "of" on line 6 of page 3.

(4) Strike "and other sources of revenue" on lines 6 and 7 of page 3.

(5) Strike "financial assistance" on lines 20 and 21 of page 4 and substitute "aid".

(6) Strike "or state" on line 9 of page 5.

(7) Strike the first sentence of subsection 7(a) of the act and substitute the following:

"The board may direct the state treasurer to create a "School Facilities Aid Reserve Fund" within the state treasury and deposit in that fund the proceeds of bonds issued pursuant to this Act, as well as any repayments of interest or principal from aid granted under this act, which are required to be deposited therein by any resolution of the board."

Amendment No. 3 - Grusendorf

Amend **S.B. 951** on page 1 by striking lines 15-19 and substituting the following:

(2) "Capital assets" means permanent fixtures, mechanical or electrical equipment, or other tangible property that becomes a permanent improvement to an instructional facility or furnishings, other than computers, for an instructional facility that have a life at least equal to the term of the district's loan under this Act or the district's bonds purchased under this Act.

The amendments were read.

On motion of Senator Haley and by unanimous consent, the Senate concurred in the House amendments to **S.B. 951** viva voce vote.

SENATE BILL 329 WITH HOUSE AMENDMENTS

Senator Harris called **S.B. 329** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment No. 1 - Laney

Amend **S.B. 329** as follows:

(1) On page 1, strike lines 19 through 25, and on page 2, strike lines 1 through 5, and substitute the following:

(5) "Practice of public accountancy" means the offer to perform or performance by a person holding himself out to the public as a certificate or registration holder for a client or potential client, or the performance by a certificate or registration holder for a client of a sole proprietorship, partnership, or professional corporation an office of which is required to be registered under Section 10 of this Act, of a service involving the use of accounting or auditing skills. The phrase "service involving the use of accounting or auditing skills" includes:

(A) the issuance of reports on financial statements;

(B) the furnishing of management advisory or consulting services;

(C) the preparation of tax returns or the furnishing of advice on tax matters; and

(D) the furnishing of advice or recommendations in connection with a sale or an offer of sale of products if the advice or recommendations require or imply the possession of accounting or auditing skills or expert knowledge in accounting or auditing

Committee Amendment No. 2 - Laney

Amend **S.B. 329** as follows:

(1) On page 35, line 3, strike "may not perform or offer" and substitute "who performs or offers"

(2) On page 35, line 6, between "service" and ".", insert "creates a presumption of loss of independence"

(3) On page 35, strike lines 15 through 18.

Committee Amendment No. 3 - Laney

Amend **S.B. 329** as follows:

(1) On page 43, between lines 4 and 5, insert the following section, appropriately numbered:

SECTION _____. The Public Accountancy Act of 1979 (Article 41a-1, Vernon's Texas Civil Statutes) is amended by adding Section 21C to read as follows:

Sec. 21C. LIMITATION ON LIABILITY. All board members, officers, directors, and employees of state agencies, boards, and commissions shall be held harmless with respect to any disclosures made to the board in connection with any complaints filed with the board.

(2) Renumber sections of the bill accordingly.

Floor Amendment - Perez

Amend **S.B. 329** as follows:

(1) On page 14, line 11, strike "direct".

(2) On page 14, line 13, strike "direct".

(3) On page 17, line 7, between "each" and "hour", insert "accounting course".

(4) On page 17, line 12, strike "direct".

(5) On page 25, strike lines 14 through 20 and reletter subsequent subsections in consecutive alphabetical sequence.

(6) On page 26, line 20, strike "1991" and substitute in lieu thereof "1997".

(7) On page 48, amend Committee Amendment No. 1 by striking lines 18 through 25 and substituting in lieu thereof the following:

"consulting services; and

(c) the preparation of tax returns or the furnishing of advice on tax matters."

Floor Amendment on Third Reading - Perez

Amend **S.B. 329** as follows:

(1) On page 5, line 5, strike "performing".

(2) On page 5, line 6, strike "services characteristically performed by persons".

(3) On page 5, line 11, strike "performing services".

(4) On page 5, line 12, strike "characteristically performed by persons".

(5) On page 35, line 4, strike "accounting or".

The amendments were read.

On motion of Senator Harris and by unanimous consent, the Senate concurred in the House amendments to **S.B. 329** viva voce vote.

SENATE BILL 677 WITH HOUSE AMENDMENT

Senator Harris called **S.B. 677** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment - Jones

Amend **S.B. 677** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. The Professional Services Procurement Act (Article 664-4, Vernon's Texas Civil Statutes) is amended by adding Section 3A to read as follows:

Sec. 3A. In the procurement of architectural or engineering services by an entity described by Section 3 of this Act, the entity shall negotiate a contract for the services on the basis of a two step process:

(a) Initial selection shall be based on the demonstrated competence and qualifications of the person, including any firm, who is to provide the services and;

(b) After the entity makes its selection according to Sec. 3A(a) it shall proceed to negotiate a contract at a fair and reasonable price.

(c) If the entity is unable to negotiate a satisfactory contract with the most highly qualified person, the entity shall formally end negotiations with that person and begin negotiations with the second most highly qualified person.

(d) Negotiations shall be undertaken in this sequence until a contract is made.

SECTION 2. This Act takes effect September 1, 1989.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Harris and by unanimous consent, the Senate concurred in the House amendment to **S.B. 677** viva voce vote.

SENATE BILL 1770 WITH HOUSE AMENDMENT

Senator Henderson called **S.B. 1770** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Local and Consent Calendars
Committee Amendment - Polumbo

Amend **S.B. 1770** as follows:

(1) On page 1, line 4, between "Subsections" and "(c)", insert "(a),".

(2) On page 1, between lines 5 and 6, insert the following:

(a) A statutory probate court in Harris County has the general jurisdiction of a probate court as provided by Section 25.0021 and also has jurisdiction over the collection and management of estates of minors, mentally disabled persons, and deceased persons. The statutory probate courts of Harris County also have[;] concurrent jurisdiction with the district court in all actions by or against a personal representative, in all actions involving an intervivos trust, in all actions involving a charitable trust, and in all actions involving a testamentary trust, whether or not the matter is appertaining to or incident to an estate[~~, jurisdiction in matters involving an intervivos trust~~]. The statutory probate courts of Harris County may exercise the pendent and ancillary jurisdiction necessary to promote judicial efficiency and economy. A judge of a statutory probate court on the motion of a party to the action or on the motion of a person interested in an estate, may transfer to his court from a district, county, or statutory court a cause of action appertaining to or incident to an estate pending in the statutory probate court or a cause of action in which a personal representative of an estate pending in a statutory probate court is a party and may consolidate the transferred cause of action with the other proceedings in the statutory probate court relating to that estate.

The amendment was read.

On motion of Senator Henderson and by unanimous consent, the Senate concurred in the House amendment to **S.B. 1770** viva voce vote.

SENATE JOINT RESOLUTION 16 WITH HOUSE AMENDMENTS

Senator Henderson called **S.J.R. 16** from the President's table for consideration of the House amendments to the resolution.

The Presiding Officer laid the resolution and the House amendments before the Senate.

Committee Amendment - Jones

Amend **S.J.R. 16** by striking all below the resolving clause and substituting in lieu thereof the following:

SECTION 1. Article XVI, Section 44, of the Texas Constitution is amended by adding Subsection (f) to read as follows:

(f) This subsection applies only to the counties of Cass, Ector, Harris, and Webb. The office of County Surveyor in the county is abolished on January 1, 1990, if at the statewide election at which the addition to the Constitution of this subsection is submitted to the voters, a majority of the voters of that county voting on the question at that election favor the addition of this subsection. If the office of County Surveyor is abolished in a county under this subsection, the powers, duties, and functions of the office are transferred to the county officer or employee

designated by the Commissioners Court of the county in which the office is abolished, and the Commissioners Court may from time to time change its designation as it considers appropriate.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held on November 7, 1989. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment to abolish the office of county surveyor in Cass, Ector, Harris, and Webb counties."

Amendment No. 1 - Counts

Amend **C.S.S.J.R. 16** as follows:

(1) On page 1, line 9, between "Ector," and "Harris", insert "Garza,".

(2) On page 2, line 1, between "Ector," and "Harris", insert "Garza,".

Amendment No. 2 - G. Luna

Amend Amendment No. 1 as follows:

(1) On page 1, line 3, after "Garza," insert Smith, Bexar".

(2) On line 5, after "Garza," add "Smith, Bexar".

The amendments were read.

Senator Henderson moved to concur in the House amendments to **S.J.R. 16**.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Parker, Parmer, Washington.

SENATE BILL 498 WITH HOUSE AMENDMENT

Senator Johnson called **S.B. 498** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Floor Amendment on Third Reading - Marchant

Amend **S.B. 498** on third reading as follows:

(1) On page 1, line 7, strike "A" and substitute "Except as provided by Subsection (e) of this article, a [~~A~~]".

(2) On page 2, between lines 14 and 15, insert the following:

(e) A search warrant may not be issued under this article to a code enforcement official of a county with a population of 2.4 million or more for the purpose of allowing the inspection of a specified premises to determine the presence of an unsafe building condition or a violation of a building regulation, statute, or ordinance.

The amendment was read.

Senator Johnson moved to concur in the House amendment to **S.B. 498**.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Parker, Parmer, Washington.

SENATE BILL 622 WITH HOUSE AMENDMENT

Senator Johnson called **S.B. 622** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment - McDonald

Amend **S.B. 622** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Section 7, Article 4518, Revised Civil Statutes of Texas, is amended to read as follows:

Sec. 7. (a) The Board may recognize, prepare, or implement continuing education programs for its licensees and may require participation in continuing education programs as a condition of renewal of a registration certificate. [~~Participation in the programs is voluntary.~~]

(b) The Board may not require more than a total of 20 hours of continuing education in a two-year registration period and may not require that more than 10 of those hours consist of classroom instruction in approved programs. The remaining 10 hours may consist of any combination of classroom instruction, institutional-based instruction, or individualized study.

(c) If the Board requires participation in continuing education programs as a condition of renewal of a registration certificate, the Board shall by rule establish a system for the approval of programs and providers of continuing education. In adopting the rules, the Board shall consider, but is not obligated to approve, programs or providers approved or accredited through the Board of Accreditation of the American Nurses' Association or the National Federation of Nursing Specialty Organizations, and nurse in-service programs offered by hospitals accredited by the Joint Commission on Accreditation of Healthcare Organizations, certified by Medicare, or maintained or operated by the federal government or the State of Texas. The Board may assess programs and providers a fee in an amount reasonable and necessary to defray the costs incurred in approving providers and programs.

(d) The board may adopt other rules as necessary to implement this section.

SECTION 2. Subsection 5(l) of Article 4528c, Revised Civil Statutes of Texas, is amended to read as follows:

(l)(1) The Board may recognize, prepare, or implement continuing education programs for its licensees and may require participation in continuing education programs as a condition of renewal of a license. [~~Participation in the programs is voluntary.~~]

(2) The Board may not require more than a total of 20 hours of continuing education in a two-year license period and may not require more than 10 of those hours consist of classroom instruction in approved programs. The remaining 10 hours may consist of any combination of classroom instruction, institutional-based instruction, or individualized study.

(3) If the Board requires participation in continuing education programs as a condition of renewal of a license, the Board shall by rule establish a system for the approval of programs and providers of continuing education. In adopting the rules, the Board shall consider, but is not obligated to approve, programs or providers approved or accredited through continuing education accreditation systems established by national or state associations of licensed vocational nurses, and nurse in-service programs offered by hospitals accredited by the Joint Commission on Accreditation of Healthcare Organizations, certified by Medicare, or maintained or operated by the federal government or the State of Texas. The Board may assess programs and providers a fee in an amount reasonable and necessary to defray the costs incurred in approving providers and programs. The fee collected under this subsection shall be deposited in the Vocational Nurse Examiners Fund.

(4) The Board may adopt other rules as necessary to implement this section.

SECTION 3. This Act takes effect September 1, 1989.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Johnson and by unanimous consent, the Senate concurred in the House amendment to **S.B. 622** viva voce vote.

SENATE BILL 1249 WITH HOUSE AMENDMENTS

Senator Johnson called **S.B. 1249** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Local and Consent Calendars
Committee Amendment No. 1 - Campbell

Amend **S.B. 1249** on page 2, line 1 by inserting the following: "or cremation" between the words "interment" and "of"

Local and Consent Calendars
Committee Amendment No. 2 - Soileau

Amend **S.B. 1249** on Page 2, line 1 by adding the following language after the period.

No pauper shall be cremated if a relative or friend expresses objection to this procedure.

The amendments were read.

On motion of Senator Johnson and by unanimous consent, the Senate concurred in the House amendments to **S.B. 1249** viva voce vote.

SENATE BILL 1075 WITH HOUSE AMENDMENTS

Senator Henderson called **S.B. 1075** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Floor Amendment No. 1 - VanderVoort

Amend **S.B. 1075** on page 1, line 9, between "municipalities" and the comma, by inserting "with a population of 1.5 million or more".

Floor Amendment No. 2 - Stiles

Amend **S.B. 1075** as follows:

Add a new Section 232.010 to read as follows:

Sec. 232.010. EXCEPTION TO PLAT REQUIREMENT: COUNTY DETERMINATION. A commissioners court of the county may allow conveyance of portions of one or more previously platted lots by metes and bounds description without revising the plat.

Floor Amendment on Third Reading - Stiles

1) Amend **S.B. 1075** on third reading by adding new sections 2 through 6 to read as follows:

SECTION 2. (a) Chapter 212, Local Government Code, as added by the Act of the 71st Legislature, Regular Session, 1989, which Act conforms the Local Government Code to certain Acts of the 70th Legislature, nonsubstantively codifies in that code certain related statutes, and which makes certain corrective and conforming amendments is amended by adding this section.

(b) Section 212.047 is added to Chapter 212 to read as follows:

Sec. 212.047. A city may delegate the ability to approve minor plats involving four (4) or fewer lots fronting on an existing street and not requiring the creation of any new street, or the extension of city facilities, to an employee of the city. Such designated employee may, for any reason, elect to present such plat to the City Planning Commission or governing body, or both, as the case may be, to approve said plat. Said employee shall not disapprove any such plat, and shall be required to refer any plat which he refuses to approve to the City Planning Commission or governing body, or both, as the case may be, within the time period specified in Section 212.009.

SECTION 3. Section 212.015(b), Local Government Code, is amended to read as follows:

(b) Notice of the hearing required under Section 212.014 shall be given before the 15th day before the date of the hearing by:

(1) publication in an official newspaper or a newspaper of general circulation in the county in which the municipality is located; and

(2) by written notice, with a copy of Subsection (c) attached, forwarded by the municipal authority responsible for approving plats to the owners of property in the original subdivision, as indicated on the most recently approved municipal [~~ad valorem~~] tax roll or in the case of subdivision within the extraterritorial jurisdiction, the most recently approved county tax roll within 200 feet of the property upon which the replat is requested [~~of the municipality's governing body, of all lots in the preceding plat~~]. The written notice may be delivered by depositing the notice, properly addressed with postage prepaid, in a post office or postal depository within the boundaries of the municipality. [~~If the preceding plat contains more than 100 lots, the written notice shall be mailed only to the owners of lots located within 500 feet of the lots to be replatted.~~]

SECTION 4. Section 212.015(c), Local Government Code, is amended to read as follows:

(c) If the proposed replat is protested in accordance with this subsection, the proposed replat must receive, in order to be approved, the affirmative vote of at least three-fourths of all members of the City Planning Commission or governing body, or both, as the case may be. In order for there to be such legal protest, written instruments signed by the owners of at least twenty (20) percent of the area of the lots or land immediately adjoining the area covered by the proposed replat and extending 200 feet from that area, but within the original subdivision, must be filed with the City Planning Commission or governing body, or both, as the case may be, prior to the close of the public hearing. [~~If 20 percent or more of the owners to whom notice is required to be given under Subsection (b) file with the municipal authority responsible for approving plats a written protest of the replatting before or at the hearing, the municipal authority shall require for the replatting the written approval of at least 66-2/3 percent of the owners of all lots in the preceding plat or of the owners of lots located within 500 feet of the lots to be replatted if the preceding plat contains more than 100 lots. In computing percentages of ownership, each lot~~

~~is considered equal to all other lots regardless of size or number of owners, and the owners of each lot are entitled to cast only one vote per lot.~~]

SECTION 5. Section 212.015, Local Government Code, is amended by adding a new subsection (d) to read as follows:

(d) In computing the percentage of land area under subsection (c), the area of streets and alleys shall be included.

SECTION 6. Section 212.015(d), Local Government Code, is amended to read as follows:

(e) [~~(d)~~] Compliance with Subsections [~~(b) and~~] (c) and (d) is not required for approval of a replat of part of a preceding plat if the area to be replatted was designated or reserved for other than single or duplex family residential use by notation on the last legally recorded plat or in the legally recorded restrictions applicable to the plat.

2) Renumber subsequent sections appropriately.

The amendments were read.

Senator Henderson moved to concur in the House amendments to **S.B. 1075**.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Parker, Parmer, Washington.

SENATE BILL 158 WITH HOUSE AMENDMENTS

Senator Leedom called **S.B. 158** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment - Hilbert

Amend **S.B. 158** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Chapter 447, Government Code, is amended to read as follows:

CHAPTER 447. ENERGY MANAGEMENT CENTER [~~EFFICIENCY DIVISION~~]

OF THE OFFICE OF THE GOVERNOR

Sec. 447.001. ESTABLISHMENT OF CENTER [~~DIVISION~~]. The energy management center [~~efficiency division~~] is established as a division of the office of the governor.

Sec. 447.002. INFORMATION; RULES; PROGRAMS. The energy management center [~~efficiency division~~] shall develop and provide energy conservation information for the state. The center may [~~and shall~~] make rules relating to the adoption and implementation of energy conservation programs applicable to state buildings and facilities. The center may act in such other capacities as otherwise authorized by state or federal law. The center's rules for programs and [~~division's adopted~~] energy conservation, adopted under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) may [~~rules shall~~] include provisions relating to the retrofitting of existing state structures with energy-saving devices [~~in existing state structures~~] and to the energy related renovation of such structures. To the extent that the office of the governor receives money appropriated for energy efficiency programs, the office of the governor, through the energy management center [~~efficiency division~~], shall implement programs that the center [~~division~~] identifies as encouraging energy conservation by state government. Unless money is available for the

implementation of such a program, a state agency is not required to spend money for an energy conservation program under this section.

Sec. 447.003. LIAISON TO FEDERAL GOVERNMENT. The energy management center [~~efficiency division~~] shall serve as the state liaison to the federal government for the implementation and administration of federal programs relating to state agency energy matters [~~conservation~~]. In that capacity, the center [~~division~~] shall administer [~~any~~] state programs established under:

(1) Part D, Title III, Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.);

(2) Part G, Title III, Energy Policy and Conservation Act (42 U.S.C. 6371 et seq.);

(3) the National Energy Extension Service Act (42 U.S.C. 7001 et seq.); and [~~or~~]

(4) other federal energy conservation programs as may be assigned to the energy management center by the governor or legislature [~~the Energy Research and Development Administration appropriation authorization (42 U.S.C. 5907a et seq.)~~].

Sec. 447.004. DESIGN STANDARDS. (a) Through the energy management center [~~efficiency division~~], the office of the governor shall adopt and publish energy conservation design standards, under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), that all new state buildings and major renovation projects, including buildings and major renovation projects of state-supported institutions of higher education, are required to meet. The office of the governor shall define what constitutes a major renovation project under this section and shall review and update the standards biennially.

(b) The standards must include performance and procedural standards for the maximum energy conservation allowed by the latest and most cost-effective [~~effective~~] technology that is consistent with the requirements of public health, [~~and~~] safety, and [~~with~~] economic resources [~~requirements~~].

(c) The standards must be adopted in terms of energy consumption levels [~~allotments~~] and must take into consideration the various classes of building uses and [~~. Performance standards~~] must allow for design flexibility. Procedural standards must be directed toward specific design and building practices that produce good thermal resistance and low infiltration [~~air leakage~~] and toward requiring practices in the design of mechanical and electrical systems that maximize energy efficiency [~~conserve energy~~]. The procedural standards must concern, as applicable:

(1) insulation;

(2) [~~appropriate~~] lighting;

(3) ventilation;

(4) [~~the potential use of new systems for saving energy in ventilation;~~] climate control;[~~, and other areas; and~~]

(5) special energy requirements of health related facilities of higher education and state agencies; and

(6) any other item that the office of the governor considers appropriate that is adopted under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(d) In order to demonstrate compliance with the requirement to adopt and update the conservation design standards, each agency and institution of higher education shall submit a copy of its design and construction manuals to the office of the governor on request.

(e) Prior to construction, agencies and institutions of higher education shall have the design architect or engineer on the project certify to the agency or institution, with a copy to the energy management center, that all new building

construction and major building renovation projects comply with the energy conservation design standards required under this section.

Sec. 447.005. ENERGY EFFICIENCY PROJECTS. Subject to applicable state and federal laws or guidelines, the office of the governor, through the energy management center [~~efficiency division~~], may implement energy efficiency projects at state agencies or may assist those agencies in implementing the projects through energy efficiency programs financed through state or federal [~~matching~~] grants or loans.

Sec. 447.006. OBTAINING [~~MAINTENANCE~~] DATA. The [~~To obtain current information on maintenance data, the~~] office of the governor shall obtain semiannually from each state agency information relating to the cost of heating and[;] cooling[~~, and maintaining~~] buildings owned by the state.

Sec. 447.007. MODEL CODES. The [~~(a) After consultation with the Texas Department of Community Affairs, the~~] office of the governor may recommend [~~shall prepare~~] model energy conservation building codes[:

[~~(b) The office of the governor shall provide the codes~~] to municipalities for use in enacting or amending municipal ordinances.

Sec. 447.008. ADDITIONAL ENERGY [~~MANAGEMENT~~] SERVICES. (a) Through the energy management center [~~efficiency division~~], the office of the governor may provide additional energy [~~management~~] services, including:

(1) training of designated state employees in energy management, [~~and~~] energy-accounting techniques, and energy efficient design and construction;

(2) technical assistance regarding energy efficient capital improvements, energy efficient building design, and [~~including~~] cogeneration and thermal storage investments;

(3) technical assistance to the State Auditor and to state agencies regarding conducting energy management performance audits and monitoring of utility bills to detect billing errors;

(4) technical assistance to state agencies regarding third-party financing of energy efficient capital improvement projects; and

(5) other energy related assistance requested by agencies, other legislatively created entities of the state, institutions of higher education, and consortiums of institutions of higher education that the office of the governor considers appropriate [~~assistance to state agencies relating to the purchase of natural gas, water, or electricity~~].

(b) Using available state, federal, or oil overcharge funds, the energy management center may assist state agencies and institutions of higher education in analyzing and negotiating rates for electricity and natural gas supplies from locally certificated electric suppliers, natural gas suppliers, or state-owned energy resources, including transportation charges for natural gas. The provisions of this section shall not be construed to empower the energy management center to negotiate on behalf of state agencies or institutions, but rather to provide technical assistance as needed.

(c) Agencies and institutions of higher education may seek the assistance of the energy management center before negotiating or contracting for the supply and transportation of natural gas and electricity that will result in an anticipated annual expenditure of more than $100,000.

(d) Any state agency or institution of higher education with expertise in rate analysis, negotiation, or any other matter related to the procurement of electricity and natural gas supplies from locally certificated electric suppliers, natural gas suppliers, or state-owned energy resources may assist the energy management center whenever practicable.

(e) Using available funds from any source where permitted, the energy management center may assist state agencies, legislatively created entities of the

state, institutions of higher education, and consortiums of institutions of higher education to further the goals and pursue the policies of the state in energy research and other energy matters as may be determined by the governor or the legislature.

Sec. 447.009. ENERGY [~~EFFICIENCY~~] AUDITS. (a) The energy management center [~~efficiency division~~] shall conduct audits of state-owned buildings used by state agencies. The audits shall be designed to assist state agencies in reducing energy consumption and costs through improved energy efficiency.

(b) Based on the audit performed under Subsection (a) of this section, the office of the governor may recommend changes to improve energy efficiency.

(c) The energy management center may provide training, technical assistance, and funding, if available, to the State Auditor's office or the office charged with performing management audits of state agencies to conduct energy management audits in state agencies and institutions of higher education.

(d) State agencies and institutions of higher education shall conduct reviews and audits of utility billings and contracts to detect billing errors. Contracts with private sector firms must comply with all applicable provisions of the Position Classification Act of 1961 (Article 6252-11, Vernon's Texas Civil Statutes) regarding professional services contracts and may not be awarded on a contingency fee basis unless a finding that the contract is necessary, reasonable, and prudent is obtained from the office of the governor.

Sec. 447.010. ENERGY-SAVING DEVICES OR MEASURES. (a) On approval by the energy management center, a [~~A~~] state agency that reduces its energy expenses [~~through the use of energy-saving devices or measures recommended by the energy efficiency division during an audit conducted under Section 447.009~~] may use any funds saved by the agency from appropriated utility [~~expense~~] funds for the [~~installment~~] purchase of [~~the~~] energy-saving devices or measures. For purposes of this section, "energy-saving device or measure" means a device or measure that directly reduces [~~the~~] energy costs or the consumption of a lighting, heating, ventilating, or air conditioning system or of other equipment that uses electricity, [~~water,~~] natural gas, fuel oil, or any other energy source without materially altering the quality of such lighting, heating, ventilating, air conditioning, or other energy consuming system.

(b) A state agency, in accordance with the recommendations of an energy audit, may purchase energy-saving devices or measures from appropriated utility funds if the savings in utility funds projected by the audit will offset the purchase within the same biennium for which the utility funds were appropriated. A copy of the recommendation and repayment schedule must be attached to the purchase voucher as evidence of the projected savings.

Sec. 447.011. ENERGY MANAGEMENT PLANNING. (a) Through the energy management center, the office of the governor shall provide energy management planning assistance to state agencies and institutions of higher education, including:

(1) preparation of a long-range plan for the delivery of reliable, cost-effective utility services for state agencies, institutions of higher education, boards, and commissions in Travis County. This plan shall be presented to the affected agencies for use in preparing their five-year construction and major rehabilitation plans. After other energy-saving alternatives are considered, district heating and cooling and on-site generation of electricity may be considered in planning for reliable, efficient, and cost-effective utility services;

(2) assistance to the Department of Public Safety for energy emergency contingency planning, using state or federal funds when available; and

(3) assistance to state agencies and institutions of higher education in preparing comprehensive energy management plans. The energy management center shall prepare guidelines for the preparation of these plans. State agencies and

institutions of higher education that expend more than $250,000 annually for heating, lighting, and cooling and that occupy state-owned buildings shall prepare and submit a five-year energy management plan to the office of the governor. Agencies and institutions of higher education with smaller usage may be required to submit such plans. Updated plans shall be submitted biennially when requested by the governor.

(b) The energy management plan required in Subsection (a)(3) shall be included in the five-year construction and major rehabilitation plans for institutions of higher education as required under Section 61.058 and 61.0651, Education Code.

SECTION 2. This Act takes effect September 1, 1989.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment - Hury, A. Smith

Amend the **C.S.S.B. 158** by striking the words "and other energy matters" as they appear in Sec. 447.008 (c).

The amendments were read.

On motion of Senator Leedom and by unanimous consent, the Senate concurred in the House amendments to **S.B. 158** viva voce vote.

SENATE BILL 318 WITH HOUSE AMENDMENT

Senator Leedom called **S.B. 318** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment - Guerrero

Amend Section 3 of **S.B. 318** to read as follows:

SECTION 3. Subsections (b) and (c), Section 6.05, Article 6, State Purchasing and General Services Commission Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The space may be leased from another state agency through an interagency contract or from the federal government, a commercial building which is 100 percent owned, either directly or indirectly, by a statewide Texas public retirement system or a political subdivision, including a county, a municipality, a school district, a water or irrigation district, a hospital district, a council of government, or a regional planning council, through a negotiated contract.

(c) The space may be leased from a private source through competitive bidding or through competitive sealed proposals under Section 6.051 of this article. The [~~whenever possible, but the~~] commission[~~, with the approval of the state agency,~~] may negotiate for [~~the~~] space when it makes a written determination that competition is not available.

The amendment was read.

On motion of Senator Leedom and by unanimous consent, the Senate concurred in the House amendment to **S.B. 318** viva voce vote.

SENATE BILL 365 WITH HOUSE AMENDMENT

Senator Leedom called **S.B. 365** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Floor Amendment - Robnett

Amend **S.B. 365** by striking all below the enacting clause and substituting the following:

SECTION 1. Subchapter B, Chapter 11, Title 110B, Revised Statutes, is amended by adding Section 11.113 to read as follows:

Sec. 11.113. FUND. (a) The State Pension Review Board fund is created in the state treasury. Money in the fund may be appropriated only to assist in paying staff salaries, operating and actuarial expenses of the board, and for such activities as defined by Subsection (e) of this section.

(b) In this section:

(1) "Active member" means a person who is on the payroll of an employing entity included in the coverage of a public retirement system and who receives credit in the retirement system for service performed in the position for which the person is paid.

(2) "Annuitant" means a person who receives periodic payments from a public retirement system that are based on service that was credited in the retirement system to a person who was an active member.

(c) The governing board of any public retirement system may vote to make an annual contribution to the State Pension Review Board not to exceed 50 cents for each active member and annuitant of the retirement system as of September 1 of the year for which the contribution is made. The contribution is payable in a lump sum not later than October 1 of that year.

(d) Each public retirement system shall certify to the board and to the comptroller of public accounts the amount of the annual contribution to be made under Subsection (c) of this section. The comptroller by rule may prescribe the form and content of certifications. The comptroller shall deposit remittances received under this subsection in the State Pension Review Board fund.

(e) The board is authorized to conduct training sessions, schools, or other educational activities for trustees and administrators of public retirement systems. The board may also furnish other appropriate services such as actuarial studies or other requirements of systems and may establish appropriate fees for these activities and services. The fees may be based on whether or not the trustees, administrators, or systems contribute to the State Pension Review Board fund under Subsection (c) of this section. The net proceeds of these fees shall be deposited in the fund.

SECTION 2. This Act takes effect September 1, 1989.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Leedom and by unanimous consent, the Senate concurred in the House amendment to **S.B. 365** viva voce vote.

SENATE BILL 541 WITH HOUSE AMENDMENTS

Senator Leedom called **S.B. 541** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment - Gibson

Amend **S.B. 541** as follows:

(1) Strike the first sentence of Subsection (a), Section 10A, Texas Public Finance Authority Act, as added by the bill, and substitute: "When the authority submits its application for approval of a bond issue to the bond review board, the agency or institution that will use the project to be financed by the bonds shall submit to the bond review board a project analysis of the project.".

(2) At the end of Subsection (b), Section 10A, Texas Public Finance Authority Act, as added by the bill, add: "Instead of the project analysis required by this section, the Texas Department of Corrections may substitute the master plan required to be submitted by Section 3, Chapter 696, Acts of the 70th Legislature, Regular Session, 1987 (Article 601d-1, Vernon's Texas Civil Statutes), if the master plan contains information substantially equivalent to the information required to be in a project analysis under Section 5.16, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes).".

Committee Amendment - Gibson

Amend **S.B. 541** by deleting subsection (c) on page 1, lines 19-21 and making corresponding clerical changes.

The amendments were read.

On motion of Senator Leedom and by unanimous consent, the Senate concurred in the House amendments to **S.B. 541** viva voce vote.

SENATE BILL 542 WITH HOUSE AMENDMENT

Senator Leedom called **S.B. 542** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Local and Consent Calendars Committee Amendment - Richardson

Amend **S.B. 542** as follows:

On page 2 after line 24 add the following:
Prior to the actual sale or lease the state representative and state senator in the district where the subject property is located shall be notified of all efforts to sell or lease the property and shall be provided with copies of all brokerage contacts relating to the sale or lease.

The amendment was read.

On motion of Senator Leedom and by unanimous consent, the Senate concurred in the House amendment to **S.B. 542** viva voce vote.

SENATE BILL 869 WITH HOUSE AMENDMENTS

Senator Leedom called **S.B. 869** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Floor Amendment No. 1 - A. Smith

Amend **S.B. 869** by adding Section 6 as follows:

Subchapter D, Chapter 9, Business & Commerce Code, is amended by adding Sections 9.410 and 9.411 to read as follows:
Sec. 9.410. MASTER ASSIGNMENT AND AMENDMENT. (a) A secured party may assign all of the secured party's rights under more than one financing

statement filed with the secretary of state by filing a written statement of master assignment signed by the secured party of record in each financing statement and setting forth the name of the secured party of record and file number of each financing statement and the name and address of the assignee. The secured party must also provide filing information in computer readable form prescribed by the secretary of state.

(b) A secured party may change the name or mailing address of the secured party in more than one financing statement by filing a written statement of master assignment signed by the secured party of record in each financing statement and setting forth the name of the secured party of record and file number of each financing statement and the new name or mailing address of the secured party. The secured party must also provide filing information in computer readable form prescribed by the secretary of state.

(c) The filing fee for filing, indexing, and furnishing filing data about a statement of master assignment or master amendment is $500 plus 50 cents for each financing statement covered by the master statement in excess of 50.

Sec. 9.411. RULES. The secretary of state may adopt rules necessary to administer this subchapter.

Renumber Sections 6 and 7 of **S.B. 869** accordingly.

Floor Amendment No. 2 - Eckels

Amend **S.B. 869**, page 1, between line 16 and 17, by adding the following:

(3)(a) for the expedited access or access by electronic data transmittal processes to data that is stored in state computer record banks maintained by the secretary, a fee in an amount reasonable and necessary to cover the costs of establishing and administering such a system.

(b) Notwithstanding any other provision of this code, the secretary is authorized to maintain a system to provide expedited access by electronic data transmittal processes to all information that is stored in state computer banks maintained by the secretary and that is not classified as confidential under a statute or court decision.

The amendments were read.

On motion of Senator Leedom and by unanimous consent, the Senate concurred in the House amendments to **S.B. 869** viva voce vote.

SENATE BILL 1105 WITH HOUSE AMENDMENT

Senator Leedom called **S.B. 1105** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment - Robnett

Amend **S.B. 1105** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Section 25.108, Subchapter B, Title 110B, Revised Statutes, is amended to read as follows:

Sec. 25.108. REPORTS [~~REPORT~~]. (a) No later than December 15 of each year, [~~Annually,~~] the retirement system shall publish a report in the Texas Register containing the following information: (1) the retirement system's fiscal transactions of the preceding fiscal year;

(2) the amount of the system's accumulated cash and securities; and

(3) the rate of return on the investment of the system's cash and securities during the preceding fiscal year [~~the balance sheet showing the financial condition of the system for the preceding fiscal year~~].

(b) No later than March 1 of each year, the retirement system shall publish a report in the Texas Register containing the balance sheet of the retirement system as of August 31 of the preceding fiscal year. The report must contain an actuarial valuation of the system's assets and liabilities, including the extent to which the system's liabilities are unfunded.

(c) A copy of the report required by Subsection (a) of this section must be filed with the governor, the lieutenant governor, the speaker of the house of representatives, the State Pension Review Board, the Legislative Audit Committee, and the state auditor no later than December 15 of each year.

(d) A copy of the report required by Subsection (b) of this section must be filed with the governor, the lieutenant governor, the speaker of the house of representatives, the State Pension Review Board, the Legislative Audit Committee, and the state auditor no later than March 1 of each year.

SECTION 2. Subchapter B, Chapter 25, Title 110B, Revised Statutes, is amended by adding Section 25.1081 to read as follows:

Sec. 25.1081. MANAGEMENT AUDIT. (a) The Legislative Audit Committee may contract with an independent and internationally recognized accounting firm with substantial experience in auditing retirement or pension plans to conduct a managerial audit of the retirement system.

(b) The state auditor shall pay the costs of each management audit under this section from money appropriated to the state auditor and approved for that purpose by the Legislative Audit Committee. Not later than the 30th day after the date the retirement system receives a statement of audit costs paid by the state auditor under this subsection, the retirement system shall reimburse the state auditor for the costs from money in the expense account.

(c) The Legislative Audit Committee may determine the frequency of the audits authorized by this section and may determine the programs and operations to be covered by the audits. The accounting firm selected to conduct the audits shall report the results of those audits directly to the committee.

(d) No later than 30 days after the Legislative Audit Committee receives an audit report, the committee shall file a copy of the report with the retirement system, the governor, the lieutenant governor, the speaker of the house of representatives, the State Pension Review Board, the state auditor, and the secretary of state for publication in the Texas Register.

SECTION 3. Section 25.501, Subchapter F, Chapter 25, Title 110B, Revised Statutes, is amended to read as follows:

Sec. 25.501. STATEMENT OF AMOUNT IN INDIVIDUAL ACCOUNTS. (a) No later than December 1 of each year, the retirement system shall furnish to each member a statement of the amount credited to the member's individual account as of August 31 of the preceding fiscal year.

(b) In addition to the statement required by Subsection (a) of this section, the [~~The~~] retirement system shall furnish to a member, on written request, a statement of the amount credited to the member's individual account. The board is not required to furnish more than four such statements [~~one statement~~] to each member in a fiscal year.

SECTION 4. Section 35.108, Subchapter B, Chapter 35, Title 110B, Revised Statutes, is amended to read as follows:

Sec. 35.108. REPORTS [~~REPORT~~]. (a) No later than December 15 of each year, [~~Annually,~~] the board of trustees shall publish a report in the Texas Register containing the following information: (1) the retirement system's fiscal transactions for the preceding fiscal year;

(2) the amount of the system's accumulated cash and securities; and

(3) the rate of return on the investment of the system's cash and securities during the preceding fiscal year [~~the most recent balance sheet showing an actuarial valuation of the assets and liabilities of the system~~].

(b) No later than March 1 of each year, the board of trustees shall publish a report in the Texas Register containing the balance sheet of the retirement system as of August 31 of the preceding fiscal year. The report must contain an actuarial valuation of the system's assets and liabilities, including the extent to which the system's liabilities are unfunded.

(c) A copy of the report required by Subsection (a) of this section must be filed with the governor, the lieutenant governor, the speaker of the house of representatives, the State Pension Review Board, the Legislative Audit Committee, and the state auditor no later than December 15 of each year.

(d) A copy of the report required by Subsection (b) of this section must be filed with the governor, the lieutenant governor, the speaker of the house of representatives, the State Pension Review Board, the Legislative Audit Committee, and the state auditor no later than March 1 of each year.

SECTION 5. Subchapter B, Chapter 35, Title 110B, Revised Statutes, is amended by adding Section 35.1081 to read as follows:

Sec. 35.1081. MANAGEMENT AUDIT. (a) The Legislative Audit Committee may contract with an independent and internationally recognized accounting firm with substantial experience in auditing retirement or pension plans to conduct a managerial audit of the retirement system.

(b) The state auditor shall pay the costs of each management audit under this section from money appropriated to the state auditor and approved for that purpose by the Legislative Audit Committee. Not later than the 30th day after the date the retirement system receives a statement of audit costs paid by the state auditor under this subsection, the retirement system shall reimburse the state auditor for the costs from money in the expense account.

(c) The Legislative Audit Committee may determine the frequency of the audits authorized by this section and may determine the programs and operations to be covered by the audits. The accounting firm selected to conduct the audits shall report the results of those audits directly to the committee.

(d) No later than 30 days after the Legislative Audit Committee receives an audit report, the committee shall file a copy of the report with the retirement system, the governor, the lieutenant governor, the speaker of the house of representatives, the State Pension Review Board, the state auditor, and the secretary of state for publication in the Texas Register.

SECTION 6. Section 35.501, Subchapter F, Chapter 35, Title 110B, Revised Statutes, is amended to read as follows:

Sec. 35.501. STATEMENT OF AMOUNT IN INDIVIDUAL ACCOUNTS. (a) No later than December 1 of each year, the board of trustees shall furnish to each member a statement of the amount credited to the member's individual account as of August 31 of the preceding fiscal year.

(b) In addition to the statement required by Subsection (a) of this section, the [~~The~~] board of trustees shall furnish, on written request, to a member of the retirement system a statement of the amount credited to the member's individual account. The board is not required to furnish more than four such statements [~~one statement~~] to each member a calendar year.

SECTION 7. This Act takes effect September 1, 1989.

SECTION 8. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Leedom and by unanimous consent, the Senate concurred in the House amendment to **S.B. 1105** viva voce vote.

SENATE BILL 1340 WITH HOUSE AMENDMENTS

Senator Leedom called **S.B. 1340** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment - Robnett

Amend **S.B. 1340** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Section 3, The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. DEFINITIONS. As used in this Act:

(1) "local government" means a county; a home rule city or a city, village, or town organized under the general laws of this state; a special district; a school district; a junior college district; any other legally constituted political subdivision of the State of Texas or any adjoining state; or a combination of political subdivisions.

(2) "governmental functions and services" means all or part of any function or service included within the following general areas: police protection and detention services; fire protection; streets, roads, and drainage; public health and welfare; parks; recreation; library services; museum services; waste disposal; planning; engineering; administrative functions; public funds investment; and such other governmental functions which are of mutual concern to the contracting parties.

(3) "administrative functions" means functions normally associated with the routine operation of government such as tax assessment and collection, personnel services, purchasing, data processing, warehousing, equipment repair, and printing.

SECTION 2. Sections 2 and 6, Chapter 810, Acts of the 66th Legislature, Regular Session, 1979 (Article 4413(34c), Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 2. (a) Each state agency or political subdivision shall adopt rules governing the investment of local funds of the agency or subdivision. The rules shall clearly specify the scope of authority of officers and employees of the agency or subdivision that are designated to invest the local funds.

(b) A political subdivision may designate an officer or employee of a public funds investment pool created under The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes) as the investment officer with responsibility for local funds investment.

Sec. 6. (a) A state agency, [or] political subdivision, or public funds investment pool shall invest local funds in investments that yield the highest possible rate of return while providing necessary protection of the principal consistent with the operating requirements as determined by the governing body.

(b) A political subdivision may delegate to a public funds investment pool, by contract, the authority to hold legal title as custodian of investments purchased with local investment funds.

SECTION 3. Section 3(a), Chapter 810, Acts of the 66th Legislature, Regular Session, 1979 (Article 4413(34c), Vernon's Texas Civil Statutes), is amended to read as follows:

(a) If an officer is not assigned the function by law, a state agency or political subdivision by rule, order, ordinance, or resolution shall designate one or more officers or employees of the agency, [or] subdivision, or public funds investment pool to be responsible for the investment of local funds.

SECTION 4. Section 2(a), Public Funds Investment Act of 1987 (Article 842a-2, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) An incorporated city or town, a county, a public school district, an institution of higher education as defined by Section 61.003 of the Education Code, or any nonprofit corporation or public funds investment pool created under The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes) acting on behalf of any of those entities may, in accordance with this Act, purchase, sell, and invest its funds and funds under its control in the following:

(1) obligations of the United States or its agencies and instrumentalities;

(2) direct obligations of the State of Texas or its agencies;

(3) other obligations, the principal of and interest on which are unconditionally guaranteed or insured by the State of Texas or the United States;

(4) obligations of states, agencies, counties, cities, and other political subdivisions of any state having been rated as to investment quality by a nationally recognized investment rating firm and having received a rating of not less than A or its equivalent;

(5) certificates of deposit issued by state and national banks domiciled in this state that are:

(A) guaranteed or insured by the Federal Deposit Insurance Corporation, or its successor; or

(B) secured by obligations that are described by Subdivisions (1)-(4) of this subsection, which are intended to include all direct agency or instrumentality issued mortgage backed securities rated AAA by a nationally recognized rating agency, or by Chapter 726, Acts of the 67th Legislature, Regular Session, 1981 (Article 2529b-1, Vernon's Texas Civil Statutes), and that have a market value of not less than the principal amount of the certificates; and

(6) fully collateralized direct repurchase agreements having a defined termination date, secured by obligations described by Subdivision (1) of this subsection, pledged with a third party selected or approved by the political entity, and placed through a primary government securities dealer, as defined by the Federal Reserve, or a bank domiciled in this state.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Floor Amendment No. 1 - Hammond

Amend **C.S.S.B. 1340** in Section 4 of the bill by inserting a new Subdivision 2(a)(7) to read as follows:

"(7) certificate of deposit issued by savings and loan associations domiciled in this state are:

(A) guaranteed or insured by the Federal Savings and Loan Insurance Corporation, or its successor; or

(B) secured by obligations that are described by Subdivisions (1)-(4) of this subsection, which are intended to include all direct federal agency or instrumentality issued mortgage backed securities that have a market value of not less than the principal amount of the certificates;"

Floor Amendment No. 2 - Schlueter

Amend **C.S.S.B. 1340** on page 2, line 16, by adding the following after the period:

"An officer or employee of a commission created pursuant to Chapter 391 of the Local Government Code is not eligible to be designated under this section."

The amendments were read.

Senator Leedom moved to concur in the House amendments to **S.B. 1340**.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Parker, Parmer, Washington.

SENATE BILL 1341 WITH HOUSE AMENDMENTS

Senator Leedom called **S.B. 1341** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment - Robnett

Amend **S.B. 1341** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. SHORT TITLE. This Act may be cited as the Public Funds Collateral Act.

SECTION 2. DEFINITIONS. In this Act:

(1) "Control" and "bank holding company" have the same meanings assigned by Article 2, Chapter I, Texas Banking Code of 1943 (Article 342-102, Vernon's Texas Civil Statutes).

(2) "Deposits of public funds" means public funds of a public entity held as a demand or time deposit at a bank.

(3) "Eligible security" means:

(A) surety bonds;

(B) investment securities; and

(C) ownership or beneficial interests in investment securities (but not any option contract to purchase or sell investment securities.)

(4) "Investment security" means:

(A) a direct obligation of the United States;

(B) an obligation that in the opinion of the Attorney General of the United States is a general obligation of the United States and backed by its full faith and credit;

(C) an obligation, the principal of and interest on which are unconditionally guaranteed by the United States;

(D) an obligation of an agency or instrumentality of the United States, including a mortgage-backed security of the agency or instrumentality, rated AAA by a nationally recognized rating agency;

(E) a general or special obligation issued by a public agency, payable from taxes, revenues, or a combination of taxes and revenues that has been rated as to investment quality by a nationally recognized rating agency and that has a current rating of not less than A or its equivalent; and

(F) any security in which a public entity may invest under Article 842-a2, Vernon's Texas Civil Statutes.

(5) "Permitted institution" means:

(A) a Federal Reserve Bank;

(B) a "clearing corporation" as defined in Subsection (c), Section 8.102, Business & Commerce Code;

(C) any bank eligible to be a custodian under Subsection (b) of Section 6 of this Act; and

(D) any state or nationally chartered bank, which bank is controlled by a bank holding company that controls a bank eligible to be a custodian under Subsection (b) of Section 6 of this Act.

(6) "Public agency" means any state or any political or governmental entity, agency, instrumentality, or subdivision of a state, including without limitation municipalities, state-supported educational institutions, junior colleges, districts established pursuant to Article XVI, Section 59, of the Constitution of Texas, and public hospitals.

(7) "Public entity" means any public agency in this state whose funds are not managed by the state treasurer under Chapter 404, Government Code.

SECTION 3. AUTHORIZED COLLATERAL. Deposits of public funds shall be secured by eligible security to the extent and in the manner required by this Act.

SECTION 4. LEVEL OF COLLATERAL. The total of the face value of the surety bonds and the market value of the investment securities securing the deposits of public funds shall be in an amount at least equal to the amount of the deposits of public funds increased by the amount of any accrued interest and reduced to the extent that the deposits are insured by an agency or instrumentality of the United States government.

SECTION 5. COLLATERAL POLICY; PUBLIC ENTITY CONTRACTS. (a) Investment securities eligible to secure deposits of public funds shall be determined in accordance with written policies approved by the governing body of the public entity. The written policies may address matters including security of the institution obtaining or holding investment securities, substitution or release of investment securities, and the method of valuation of investment securities used to secure deposits of public funds.

(b) A public entity may contract with a bank domiciled in this state to determine the terms and conditions for securing deposits of public funds. The contract may contain terms and conditions relating to the investment securities used as security for deposits of public funds that are acceptable to the public entity, including provisions relating to the possession of the collateral, the substitution or release of investment securities, the ownership of the investment securities of the bank used to secure deposits of public funds, and the method of valuation of investment securities used to secure deposits of public funds.

SECTION 6. POSSESSION OF COLLATERAL. (a) In addition to all other authority granted by law, a depository for any public entity may deposit the securities pledged to secure deposits of public funds with a custodian as provided in this Act. At the request of the public entity, the depository shall place the pledged securities with a custodian as provided in Subsection (b) of this section or with the Federal Reserve.

(b) A depository may deposit pledged investment securities with a custodian that is a state or national bank which is domiciled within this state, which has a capital stock and permanent surplus of not less than $5 million, and which has been approved as a custodian by the public entity. The public entity may require that the depository not be the custodian or permitted institution or a branch of either with respect to the particular securities pledged by the depository to secure deposits of public funds. The securities shall be held in trust by the custodian to secure the deposits of public funds of the public entity in the depository pledging the securities.

The depository pledging the securities shall pay the charges, if any, of the custodian for accepting and holding the securities.

(c) On receipt of the investment securities, the custodian shall immediately, by book entry or otherwise, identify on its books and records the pledge of the securities to the public entity and shall promptly issue and deliver to the appropriate official of the public entity controlled trust receipts for the securities pledged. The security evidenced by the trust receipts is subject to inspection by the public agency or its agents at any time.

(d) A custodian holding in trust investment securities of a depository under Subsection (b) of this section may deposit the pledged securities with a permitted institution if the permitted institution is the third party to the transaction. The securities shall be held by the permitted institution to secure funds deposited by the public entity in the depository pledging the securities. On receipt of the securities, the permitted institution shall immediately issue to the custodian an advice of transaction or other document evidencing the deposit of the securities. When the pledged securities held by a custodian are deposited, the permitted institution may apply book entry procedures to the securities. The records of the permitted institution shall at all times reflect the name of the custodian depositing the pledged securities. The trust receipts the custodian issues to the public entity shall indicate that the custodian has deposited with the permitted institution the pledged securities held in trust for the depository pledging the securities.

SECTION 7. VENUE. Any legal action or proceeding by or against the public entity, arising out of or in connection with the duties of the depository, the custodian, or a permitted institution under this Act shall be brought and maintained as provided in the contract between the depository and the public entity.

SECTION 8. PRIORITY. Any custodian under this Act, acting alone or through a permitted institution, shall for all purposes under state law, notwithstanding anything in Chapters 8 and 9 of the Business & Commerce Code to the contrary, be the bailee or agent of the public entity depositing such public funds with the depository, and the security interest arising out of a pledge of securities to secure deposits of the public entity shall be created, shall attach, and shall be perfected for all purposes under state law from the time that the custodian identifies the pledge of the securities on its books and records and issues the trust receipts and remains as of that time perfected in the hands of all subsequent custodians and permitted institutions.

SECTION 9. ACT CONTROLLING. (a) To the extent of any conflict between this Act and another law relating to security for deposits of public funds, this Act prevails.

(b) This Act does not apply to the collateralization of funds under the control of a public retirement system as defined by Subdivision (2), Section 12.001, Title 110B, Revised Statutes.

SECTION 10. EFFECTIVE DATE. This Act takes effect September 1, 1989.

SECTION 11. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Amendment No. 1 - Rudd

Strike all below the enacting clause and substitute the following:

SECTION 1. SHORT TITLE. This Act may be cited as the Public Funds Collateral Act.

SECTION 2. DEFINITIONS. In this Act:

(1) "Board" means the State Depository Board.

(2) "Control" and "bank holding company" have the same meanings assigned by Article 2, Chapter I, Texas Banking Code of 1943 (Article 342-102, Vernon's Texas Civil Statutes).

(3) "Deposits of public funds" means public funds of a public entity that:

(A) are not managed by the state treasurer under Chapter 404, Government Code; and

(B) are held as a demand or time deposit at a bank or other depository institution expressly authorized by law to accept demand or time deposits of the public entity.

(4) "Eligible security" means:

(A) surety bonds;

(B) investment securities; and

(C) ownership or beneficial interests in investment securities (but not any option contract to purchase or sell investment securities).

(5) "Exempt institution" means:

(A) a public retirement system, as defined by Section 12.001, Title 110B, Revised Statutes; and

(B) the State Permanent School Fund, as defined by Section 15.01, Education Code.

(6) "Investment security" means:

(A) a direct obligation of the United States;

(B) an obligation that in the opinion of the Attorney General of the United States is a general obligation of the United States and backed by its full faith and credit;

(C) an obligation, the principal of and interest on which are unconditionally guaranteed by the United States;

(D) an obligation of an agency or instrumentality of the United States, including a mortgage-backed security of the agency or instrumentality;

(E) a general or special obligation issued by a public agency, payable from taxes, revenues, or a combination of taxes and revenues that has been rated as to investment quality by a nationally recognized rating agency and that has a current rating of not less than A or its equivalent; and

(F) any security in which a public entity may invest under Article 842a-2, Vernon's Texas Civil Statutes.

(7) "Permitted institution" means:

(A) a Federal Reserve Bank;

(B) a "clearing corporation" as defined in Subsection (c), Section 8.102, Business & Commerce Code;

(C) any bank eligible to be a custodian under Subsection (c) of Section 6 of this Act; and

(D) any state or nationally chartered bank, which bank is controlled by a bank holding company that controls a bank eligible to be a custodian under Subsection (c) of Section 6 of this Act.

(8) "Public agency" means any state or any political or governmental entity, agency, instrumentality, or subdivision of a state, including without limitation municipalities, state-supported educational institutions, junior colleges, districts established pursuant to Article XVI, Section 59, of the Constitution of Texas, and public hospitals.

(9) "Public entity" means any public agency in this state that is not an institution of higher education as defined by Section 61.003, Education Code.

(10) "State agency" means a public entity that:

(A) has authority that is not limited to a geographic portion of the state; and

(B) was created by constitution or a statute of this state.

(11) "Trust receipt" means evidence of receipt, identification, and recording, including but not limited to physical controlled trust receipt or written or electronically transmitted advice of transaction.

SECTION 3. AUTHORIZED COLLATERAL. Deposits of public funds shall be secured by eligible security to the extent and in the manner required by this Act.

SECTION 4. LEVEL OF COLLATERAL. The total of the face value of the surety bonds and the market value of the investment securities securing the deposits of public funds shall be in an amount at least equal to the amount of the deposits of public funds increased by the amount of any accrued interest and reduced to the extent that the deposits are insured by an agency or instrumentality of the United States government.

SECTION 5. COLLATERAL POLICY; PUBLIC ENTITY CONTRACTS. (a) Investment securities eligible to secure deposits of public funds shall be determined in accordance with written policies approved by the governing body of the public entity. The written policies may address matters including security of the institution obtaining or holding investment securities, substitution or release of investment securities, and the method of valuation of investment securities used to secure deposits of public funds.

(b) A public entity may contract with a bank domiciled in this state to determine the terms and conditions for securing deposits of public funds. The contract may contain terms and conditions relating to the investment securities used as security for deposits of public funds that are acceptable to the public entity, including provisions relating to the possession of the collateral, the substitution or release of investment securities, the ownership of the investment securities of the bank used to secure deposits of public funds, and the method of valuation of investment securities used to secure deposits of public funds.

(c) The public entity shall inform the depository for its deposits of public funds of significant changes in the amount or activity of deposits of public funds reasonably in advance of such changes.

SECTION 6. POSSESSION OF COLLATERAL. (a) In addition to all other authority granted by law, a depository for any public entity may deposit the securities pledged to secure deposits of public funds with a custodian as provided in this Act. At the request of the public entity, the depository shall place the pledged securities with a custodian as provided in Subsection (c). The public entity may require that the depository not be the custodian or permitted institution or a branch of either with respect to the particular securities pledged by the depository to secure deposits of public funds.

(b) Notwithstanding Subsection (a) of this Section, the depository of deposits of public funds for any state agency shall place the pledged securities with a custodian as provided in Subsection (c). The custodian and the state agency shall execute a written agreement to determine the terms and conditions for securing deposits of public funds. The depository for a state agency shall not be the custodian or permitted institution or a branch of either with respect to the particular securities pledged by the depository to secure deposits of public funds.

(c)(1) A depository for a public entity may deposit investment securities pledged to secure deposits of public funds with a custodian that the public entity has approved as a custodian and that is either:

(A) a state or national bank which is domiciled within this state, which has been designated a state depository by the Board, and which has a capital stock and permanent surplus of not less than $5 million;

(B) the Texas Treasury Safekeeping Trust Company; or

(C) a Federal Reserve Bank or its branches.

(2) The securities shall be held in trust by the custodian to secure the deposits of public funds of the public entity in the depository pledging the securities.

(d) On receipt of the investment securities, the custodian shall immediately, by book entry or otherwise, identify on its books and records the pledge of the securities to the public entity and shall promptly issue and deliver to the appropriate official of the public entity trust receipts for the securities pledged. The security evidenced by the trust receipts is subject to inspection by the public agency or its agents at any time.

(e) A custodian holding in trust investment securities of a depository under Subsection (c) may deposit the pledged securities with a permitted institution. The securities shall be held by the permitted institution to secure funds deposited by the public entity in the depository pledging the securities. On receipt of the securities, the permitted institution shall immediately issue to the custodian an advice of transaction or other document evidencing the deposit of the securities. When the pledged securities held by a custodian are deposited, the permitted institution may apply book entry procedures to the securities. The records of the permitted institution shall at all times reflect the name of the custodian depositing the pledged securities. The trust receipts the custodian issues to the public entity shall indicate that the custodian has deposited with the permitted institution the pledged securities held in trust for the depository pledging the securities.

SECTION 7. VENUE. Any legal action or proceeding by or against the public entity, arising out of or in connection with the duties of the depository, the custodian, or a permitted institution under this Act shall be brought and maintained as provided in the contract with the public entity.

SECTION 8. PRIORITY. Any custodian under this Act and any custodian of securities pledged to an institution of higher education as defined by Section 61.003, Education Code, acting alone or through a permitted institution, shall for all purposes under state law, notwithstanding anything in Chapters 8 and 9 of the Business & Commerce Code to the contrary, be the bailee or agent of the public entity or institution depositing such public funds with the depository, and the security interest arising out of a pledge of securities to secure deposits of the public entity or institution shall be created, shall attach, and shall be perfected for all purposes under state law from the time that the custodian identifies the pledge of the securities on its books and records and issues the trust receipts and remains as of that time perfected in the hands of all subsequent custodians and permitted institutions.

SECTION 9. RECORDS; REPORTS. (a) The depository for a public entity shall maintain separate, accurate, and complete records relating to all deposits of public funds, the pledged investment securities, and all transactions relating to the pledged investment securities.

(b) The custodian for a public entity shall maintain separate, accurate, and complete records relating to the pledged investment securities and all transactions relating to the pledged investment securities.

(c) The Board or the public entity may examine and verify at any reasonable time all pledged investment securities and all records maintained pursuant to Subsections (a) and (b) of this Section.

(d) As a part of each internal or external audit or regulatory examination of the depository for a public entity and of the custodian for a public entity, the auditor or examiner shall examine and verify the pledged investment securities and the records maintained pursuant to Subsections (a) and (b) of this Section and shall report any significant or material noncompliance with the provisions of this Act to the Board.

(e) The custodian for the public entity shall file a collateral report with the Board in the manner and on the dates prescribed by the Board.

SECTION 10. PENALTIES. (a) The Board may revoke a designation as a state depository if, after notice and a hearing, the Board makes a written finding that the depository (acting in its capacity either as a depository or a custodian, as the case may be) does not maintain reasonable compliance with this Act and has failed to remedy any violation of this Act within a reasonable period of time after written notice of such violation. Such revocation shall be effective for a period of one year.

(b) If the Board makes a written finding that the depository has not maintained reasonable compliance with this Act and has acted in bad faith in not remedying any violations of this Act, the Board may permanently revoke the designation as a state depository.

(c) If the Board determines that the depository has remedied all violations of this Act and has given assurances satisfactory to the Board that the depository will maintain reasonable compliance with this Act, the Board may reinstate its designation as a state depository.

(d) When making the findings required by Subsections (a) or (b) of this Section, the Board shall consider the totality of the circumstances regarding the performance of the depository or the custodian, including but not limited to the extent to which the noncompliance with this Act is minor, isolated, temporary, or nonrecurrent. The Board shall not find that either the depository or the custodian does not maintain reasonable compliance with this Act if such noncompliance is a result of the failure of the public entity to comply with Subsection (c) of Section 5 of this Act.

(e) Subsection (d) of this Section shall not relieve the depository or the custodian of the obligation to secure deposits of public funds with eligible security in the amount and manner required by this Act within a reasonable time after the public entity deposits the deposits of public funds with the depository.

SECTION 11. ACT CONTROLLING. (a) To the extent of any conflict between this Act and another law relating to security for deposits of public funds, this Act prevails.

(b) An exempt institution is not required to have its funds at all times fully insured or collateralized if such funds are held by a custodian of its assets pursuant to a trust agreement or held by an entity in connection with investment-related transactions and if, in the exercise of its fiduciary responsibilities, the governing body of the exempt institution determines that the exempt institution is adequately protected through the use of trust agreements, special deposits, surety bonds, substantial deposit insurance, or other method commonly used by such institutions. This Act does not prohibit prudent investment by the exempt institution in certificates of deposit or restrict the selection of depositories by the governing body of the exempt institution in accordance with its fiduciary duties.

SECTION 12. EFFECTIVE DATE. This Act takes effect September 1, 1989.

SECTION 13. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Amendment No. 2 - Robnett, Gibson

Insert between lines 14 and 15 of page 10 the following:

(c) This Act does not apply to funds maintained and administered by a public entity pursuant to a deferred compensation plan, the federal income tax treatment of which is governed by Sections 401 or 457 of the Internal Revenue Code of 1986.

The amendments were read.

On motion of Senator Leedom and by unanimous consent, the Senate concurred in the House amendments to **S.B. 1341** viva voce vote.

SENATE BILL 1342 WITH HOUSE AMENDMENTS

Senator Leedom called **S.B. 1342** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment - Robnett

Amend **S.B. 1342** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Section 2, Public Funds Investment Act of 1987 (Article 842a-2, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. AUTHORIZED INVESTMENTS. (a) An incorporated city or town, a county, a public school district, a district or authority created under Article III, Section 52(b)(1) or (2), or Article XVI, Section 59, Texas Constitution, an institution of higher education as defined by Section 61.003 of the Education Code, a hospital district, a fresh water supply district, or any nonprofit corporation acting on behalf of any of those entities may, in accordance with this Act, purchase, sell, and invest its funds and funds under its control in the following:

(1) obligations of the United States or its agencies and instrumentalities;

(2) direct obligations of the State of Texas or its agencies;

(3) other obligations, the principal of and interest on which are unconditionally guaranteed or insured by the State of Texas, or the United States or its agencies and instrumentalities;

(4) obligations of states, agencies, counties, cities, and other political subdivisions of any state having been rated as to investment quality by a nationally recognized investment rating firm and having received a rating of not less than A or its equivalent;

(5) certificates of deposit issued by state and national banks domiciled in this state that are:

(A) guaranteed or insured by the Federal Deposit Insurance Corporation, or its successor; or

(B) secured by obligations that are described by Subdivisions (1)-(4) of this subsection, which are intended to include all direct federal agency or instrumentality issued mortgage backed securities [~~rated AAA by a nationally recognized rating agency, or by Chapter 726, Acts of the 67th Legislature, Regular Session, 1981 (Article 2529b-1, Vernon's Texas Civil Statutes), and~~] that have a market value of not less than the principal amount of the certificates or in any other manner and amount provided by law for deposits of the investing entities; [~~and~~]

(6) certificates of deposit issued by savings and loan associations domiciled in this state that are:

(A) guaranteed or insured by the Federal Savings and Loan Insurance Corporation, or its successor; or

(B) secured by obligations that are described by Subdivisions (1)-(4) of this subsection, which are intended to include all direct federal agency or instrumentality issued mortgage backed securities that have a market value of not less than the principal amount of the certificates or in any other manner and amount provided by law for deposits of the investing entities;

(7) prime domestic bankers' acceptances;

(8) commercial paper with a stated maturity of 270 days or less from the date of its issuance that either:

(A) is rated not less than A-1, P-1, or the equivalent by at least two nationally recognized credit rating agencies; or

(B) is rated at least A-1, P-1, or the equivalent by at least one nationally recognized credit rating agency and is fully secured by an irrevocable letter of credit issued by a bank organized and existing under the laws of the United States or any state thereof; and

(9) fully collateralized [~~direct~~] repurchase agreements having a defined termination date, secured by obligations described by Subdivision (1) of this subsection, pledged with a third party selected or approved by the political entity, and placed through a primary government securities dealer, as defined by the Federal Reserve, or a bank domiciled in this state.

(b) In addition to investment in obligations, certificates, or agreements described in Subsection (a) of this section, bond proceeds of an incorporated city or town, a county, or a public school district, or local revenue of an institution of higher education, may be invested in common trust funds or comparable investment devices owned or administered by banks domiciled in this state and whose assets consist exclusively of all or a combination of the obligations described by [~~Subdivisions (1)-(4) and (6) of~~] Subsection (a) of this section. Common trust funds of banks domiciled in this state may be used if they:

(1) are available;

(2) comply with the provisions of the Internal Revenue Code [~~Tax Reform Act~~] of 1986 and applicable federal regulations governing the investment of bond proceeds; and

(3) meet the cash flow requirements and the investment needs of the political subdivision or institution.

(c) In this section:

(1) "Bond proceeds" includes but is not limited to proceeds from the sale of bonds and reserves and funds maintained for debt service purposes.

(2) "Prime domestic bankers' acceptances" means a bankers' acceptance with a stated maturity of 270 days or less from the date of its issuance, that will be, in accordance with its terms, liquidated in full at maturity, that is eligible for collateral for borrowing from a Federal Reserve Bank, and that is accepted by a bank organized and existing under the laws of the United States or any state, the short-term obligations of which (or of a bank holding company of which the bank is the largest subsidiary) are rated at least A-1, P-1, or the equivalent by at least one nationally recognized credit rating agency.

(3) "Repurchase agreement" means a simultaneous agreement to buy, hold for a specified time, and then sell back at a future date, obligations described by Subsection (a)(1) of this section, the principal and interest of which are guaranteed by the United States or any of its agencies, in market value of not less than the principal amount of the funds disbursed. The term includes direct security repurchase agreements and reverse security repurchase agreements.

(d) In addition to the investments described by Subsection (a) of this section, an entity listed in that subsection may, in accordance with this Act, purchase, sell, and invest its funds and funds under its control in an SEC-registered, no-load money market mutual fund with a dollar-weighted average portfolio maturity of 120 days or less, whose assets consist exclusively of the obligations that are described by Subsection (a) of this section and whose investment objectives include seeking to maintain a stable net asset value of $1 per share. No entity listed in Subsection (a) of this section is authorized by this Act to invest in the aggregate more than twenty percent of its monthly average fund balance, excluding bond proceeds, in money market mutual funds described in this Subsection, or to invest its funds or funds under its control, excluding bond proceeds, in any one money market mutual fund in an amount that exceeds ten percent of the total assets of the money market mutual fund.

SECTION 2. Section 5, Public Funds Investment Act of 1987 (Article 842a-2, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5. WRITTEN POLICIES. (a) Investments shall be made in accordance with written policies approved by the governing body. The investment policies must address liquidity, diversification, safety of principal, yield, maturity, and quality and capability of investment management, with primary emphasis on safety and liquidity.

(b) A governing body may provide in its written policies that bids for certificates of deposit be solicited orally, in writing, electronically, or in any combination of those methods.

SECTION 3. Section 54.5022, Education Code, is amended to read as follows:

Sec. 54.5022. INVESTMENT OF GENERAL PROPERTY DEPOSITS. The governing board of each institution of higher education may invest [~~in United States government securities or may place on time deposit with a bank located in the state not more than 85 percent of~~] the funds received as general property deposits authorized in Section 54.502 of this code in the manner provided under either Section 51.003 or 51.0031 of this code. [~~If the funds are placed on time deposit, they shall be secured by United States government securities.~~]

SECTION 4. This Act takes effect immediately, except that Section 2(d), Public Funds Investment Act of 1987 (Article 842a-2, Vernon's Texas Civil Statutes), as added by Section 1 of this Act, takes effect (1) immediately with respect to institutions of higher education; and (2) only if the constitutional amendment proposed by the 71st Legislature, Regular Session, authorizing local governments to invest their funds as provided by law is approved by the voters with respect to all other entities. If that amendment is not approved, Section 2(d) has no effect for entities other than institutions of higher education.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Amendment - Kuempel

Amend **C.S.S.B. 1342** by adding a new section as follows:

SECTION ___. Chapter 149, Acts of the 70th Legislature, Regular Session, 1987 (Article 116.023(a), Local Government Code) is amended to read as follows:

(a) A bank in the county that wants to be a county depository must deliver an application to the county judge on or before the first day of the term of the commissioners court at which depositories are to be selected.

(b) The application must state the amount of the bank's paid-up capital stock and permanent surplus, and the application must be accompanied by:

(1) a statement showing the financial condition of the bank on the date of the application; and

(2) a certified check or cashier's check for at least one-half percent of the county's revenue for the preceding year.

(c) The certified or cashier's check that accompanies an application is a good-faith guarantee on the part of the applicant that if accepted as a county depository it will execute the bond required under this chapter. If a bank is selected as a depository and does not provide the bond, the county shall retain the amount of the check as liquidated damages, and the county judge shall readvertise for applications, if necessary, to obtain a depository for the county.

The amendments were read.

On motion of Senator Leedom and by unanimous consent, the Senate concurred in the House amendments to **S.B. 1342** viva voce vote.

SENATE BILL 1172 WITH HOUSE AMENDMENT

Senator McFarland called **S.B. 1172** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Floor Amendment - H. Cuellar

Amend **S.B. 1172** by adding the following new SECTION 4:

"SECTION 4. Subchapter A, Chapter 481, Government Code, as added by **S.B. 223**, Acts of the 71st Legislature, Regular Session, 1989, is amended by adding subsection (17) to Section 481.002(b) to read as follows:

(17) pay for business recruitment expenses."

Renumber subsequent sections.

The amendment was read.

On motion of Senator McFarland and by unanimous consent, the Senate concurred in the House amendment to **S.B. 1172** viva voce vote.

SENATE BILL 1084 WITH HOUSE AMENDMENTS

Senator McFarland called **S.B. 1084** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment - Russell

Amend **S.B. 1084** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Section 127.001, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 127.001. DEFINITIONS. In this chapter:

(1) "Agreement pertaining to a well for oil, gas, or water or to a mine for a mineral" means:

(A) a written or oral agreement or understanding concerning the rendering of well or mine services; or

(B) an agreement to perform a part of those services or an act collateral to those services, including furnishing or renting equipment, incidental transportation, or other goods and services furnished in connection with the services.

(2) "Mutual indemnity obligation" means an indemnity obligation in an agreement pertaining to a well for oil, gas, or water or to a mine for a mineral in which the parties agree to indemnify each other against loss, liability, or damages arising in connection with bodily injury, death, or damage to property of the respective employees, subcontractors or their employees, or invitees of each party arising out of or resulting from the performance of the agreement.

(3) "Well or mine service" includes:

(A) drilling, deepening, reworking, repairing, improving, testing, treating, perforating, acidizing, logging, conditioning, or otherwise rendering services in connection with a well drilled to produce or dispose of oil, gas, other minerals or water; and

(B) designing, excavating, constructing, improving, or otherwise rendering services in connection with a mine shaft, drift, or other structure intended for use in exploring for or producing a mineral.

(4) [~~(3)~~] "Wild well" means a well from which the escape of oil or gas is not intended and cannot be controlled by equipment used in normal drilling practice.

(5) "Unilateral indemnity obligation" means an indemnity obligation in an agreement pertaining to a well for oil, gas, or water or to a mine for a mineral in which one of the parties as indemnitor agrees to indemnify the other party as indemnitee with respect to claims for personal injury or death to the indemnitor's employees or agents or to the employees or agents of the indemnitor's subcontractors but in which the indemnitee does not make a reciprocal indemnity to the indemnitor.

SECTION 2. Section 127.004, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 127.004. EXCLUSIONS. This chapter does not apply to loss or liability for damages or an expense arising from:

(1) personal injury, death, or property injury that results from radioactivity;

(2) property injury that results from pollution, including cleanup and control of the pollutant;

(3) property injury that results from reservoir or underground damage, including loss of oil, gas, other mineral substance, or water or the well bore itself; [~~or~~]

(4) personal injury, death, or property injury that results from the performance of services to control a wild well to protect the safety of the general public or to prevent depletion of vital natural resources; or

(5) cost of control of a wild well, underground or above the surface.

SECTION 3. Section 127.005, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 127.005. INSURANCE COVERAGE. (a) This chapter does not apply to an agreement that provides for indemnity [~~with respect to claims for personal injury or death to the indemnitor's employees or agents or to the employees or agents of the indemnitor's subcontractors~~] if the parties agree in writing that the indemnity obligation will be supported by [~~available~~] liability insurance coverage to be furnished by the indemnitor.

(b) With respect to a mutual indemnity obligation, the [~~The~~] indemnity obligation is limited to the extent of the coverage and dollar limits of insurance or qualified self-insurance each party as [~~the~~] indemnitor has agreed to provide in equal amounts to the other party as indemnitee [~~furnish~~].

(c) With respect to a unilateral indemnity obligation, the [~~The~~] amount of insurance required may not exceed $500,000 [~~12 times the state's basic limits for personal injury, as approved by the State Board of Insurance in accordance with Article 5.15, Insurance Code~~].

SECTION 4. This Act applies to an indemnity obligation without regard to whether the obligation was entered into before, on, or after the effective date of this Act.

SECTION 5. This Act takes effect September 1, 1989.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment - Yost

Amend **C.S.S.B. 1084** as follows:

On page 1, line 18 insert the following language between the word "other" and the word "against":

and each other's contractors and their employees

On page 1, line 19 following "death," change the word "or" to "and"

On page 1, line 20, change the word "subcontractor" to "contractor" and following "employees," change the word "or" to "and"

On page 2, line 2 insert the following language between "conditioning," and "or":

purchasing, gathering, storing, or transporting oil, gas, brine water, fresh water, produced water, petroleum products or other liquid commodities,

On page 2, line 18 change the word "subcontractor" to "contractor"

On page 3, line 12 substitute the following language for the word "This" to read as follows:

(a) Except as to agreements with respect to the purchase, gathering, storage, or transportation of oil, gas, brine water, fresh water, produced water, petroleum products or other liquid commodities, [T]this

The amendments were read.

Senator McFarland moved to concur in House amendments to **S.B. 1084**.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Parker, Parmer, Washington.

SENATE BILL 978 WITH HOUSE AMENDMENT

Senator McFarland called **S.B. 978** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Local and Consent Calendars
Committee Amendment - Polumbo

Amend **S.B. 978** as follows:

On page 1, between lines 20 and 21, insert:

(d) This section does not apply to a police department located in a county with a population of 2.4 million or more inhabitants according to the most recent federal decennial census.

The amendment was read.

On motion of Senator McFarland and by unanimous consent, the Senate concurred in the House amendment to **S.B. 978** viva voce vote.

SENATE BILL 980 WITH HOUSE AMENDMENT

Senator McFarland called **S.B. 980** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment - Parker

Amend **S.B. 980** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Article 45.54, Code of Criminal Procedure, is amended to read as follows:

Art. 45.54. SUSPENSION OF SENTENCE AND DEFERRAL OF FINAL DISPOSITION.

(1) On a plea of guilty or nolo contendere by a [~~Upon conviction of the~~] defendant or on a finding of guilt in [~~of~~] a misdemeanor case punishable by fine only, other than a misdemeanor case disposed of by Section 143A, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), and payment of all court costs, the justice may defer further proceedings without entering an adjudication of guilt and place the defendant on probation [~~suspend the imposition of the fine and defer final disposition of the case~~] for a period not to exceed 180 days.

(2) During said deferral period, the justice may require the defendant to:

(a) post a bond in the amount of the fine assessed to secure payment of the fine;

(b) pay restitution to the victim of the offense in an amount not to exceed the fine assessed;

(c) submit to professional counseling; and

(d) comply with any other reasonable condition[~~, other than payment of all or part of the fine assessed~~].

(3) At the conclusion of the deferral period, if the defendant presents satisfactory evidence that he has complied with the requirements imposed, the justice shall [~~may~~] dismiss the complaint, and it shall be clearly noted in the docket that the complaint is dismissed and that there is not a final conviction. Otherwise, the justice may proceed with an adjudication of guilt. After an adjudication of guilt, the justice may reduce the fine assessed or may then impose the fine assessed less any portion of the assessed fine that has been paid. If the complaint is dismissed, a special expense not to exceed the amount of the fine assessed may be imposed.

(4) If at the conclusion of the deferral period the defendant does not present satisfactory evidence that the defendant complied with the requirements imposed, the justice may impose the fine assessed or impose a lesser fine. The imposition of the fine or lesser fine constitutes a final conviction of the defendant.

(5) Records relating to a complaint dismissed as provided by this article may be expunged under Article 55.01 of this code. If a complaint is dismissed under this article, there is not a final conviction and the complaint may not be used against the person for any purpose.

SECTION 2. Chapter 42, Code of Criminal Procedure, is amended by adding Article 42.111 to read as follows:

Art. 42.111. DEFERRAL OF PROCEEDINGS IN CASES APPEALED TO COUNTY COURT. If a defendant convicted of a misdemeanor punishable by fine only, other than a misdemeanor disposed of by Section 143A, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), appeals the conviction to a county court, on the trial in county court the defendant may enter a plea of guilty or nolo contendere to the offense. If the defendant enters a plea of guilty or nolo contendere, the court may defer further proceedings without entering an adjudication of guilt in the same manner as provided for the deferral of proceedings in justice court or municipal court under Article 45.54 of this code.

SECTION 3. Section 152, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 152. CONVICTIONS TO BE REPORTED TO DEPARTMENT. (a) Every magistrate or judge of a court not of record and every clerk of a court of record shall keep a full record of every case in which a person is charged with any violation of this Act or of any other law regulating the operation of vehicles on highways.

(b) Within thirty (30) [~~ten (10)~~] days after conviction or [~~of~~] forfeiture of bail of a person upon a charge of violating any provision of this Act or other law

regulating the operation of vehicles on highways, every said magistrate of the court or clerk of the court [~~of record~~] in which such conviction was had or bail was forfeited shall prepare and immediately forward to the department a written record [~~an abstract of the record of said court~~] covering the case in which said person was so convicted or forfeited bail containing the information required in Subsection (c) of this section[~~, which abstract must be certified by the person so required to prepare the same to be true and correct~~]. A justice of the peace or municipal judge who defers further proceedings, suspends all or part of the imposition of the fine, and places a defendant on probation under Article 45.54, Code of Criminal Procedure, or a county court judge who follows the same procedure pursuant to Article 42.111, Code of Criminal Procedure, may not cause to be forwarded a written record to the department unless the justice or judge subsequently proceeds with an adjudication of guilt, in which event the justice or judge shall cause to be forwarded the written record not later than the thirtieth (30) day after the date on which the justice or judge adjudicates guilt. The department may not collect a written record that is prohibited from being reported under this subsection.

(c) Said record [~~abstract~~] must be made upon a form furnished by the Department and shall include the name and address of the party charged, the number, if any, of his operator's, commercial operator's, or chauffeur's license, the registration number of the vehicle involved, the nature of the offense, the date of hearing, the plea, the judgment, or whether bail forfeited and the amount of the fine or forfeiture as the case may be.

(d) Every court of record shall also forward a like report to the department upon the conviction of any person of negligent homicide or any felony in the commission of which a vehicle was used.

(e) The failure, refusal, or neglect of any such judicial officer to comply with any of the requirements of this Section may [~~shall~~] constitute misconduct in office and may [~~shall~~] be grounds for removal therefrom.

(f) The department shall keep all records [~~abstracts~~] received hereunder at its main office.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator McFarland moved to concur in the House amendment to **S.B. 980**.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Parker, Parmer, Washington.

SENATE JOINT RESOLUTION 24 WITH HOUSE AMENDMENT

Senator McFarland called **S.J.R. 24** from the President's table for consideration of the House amendment to the resolution.

The Presiding Officer laid the resolution and the House amendment before the Senate.

Committee Amendment - Hightower

Amend **S.J.R. 24** by striking all below the resolving clause and substituting in lieu thereof the following:

SECTION 1. Article III, Section 49-h, of the Texas Constitution is amended by adding Subsection (c) to read as follows:

(c)(1) The legislature may authorize the issuance of up to $400 million in general obligation bonds, in addition to the amount authorized by Subsection (a) of this section, and use the proceeds of the bonds for acquiring, constructing, or equipping new corrections institutions, mental health and mental retardation institutions, youth corrections institutions, and statewide law enforcement facilities, and for major repair or renovation of existing facilities of those institutions.

(2) The provisions of Subsection (a) of this section relating to the review and approval of bonds and the provisions of Subsection (b) of this section relating to the status of the bonds as a general obligation of the state and to the manner in which the principal and interest on the bonds are paid apply to bonds authorized under this subsection.

SECTION 2. This proposed amendment shall be submitted to the voters at an election to be held November 7, 1989. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment authorizing the issuance of general obligation bonds for projects relating to facilities of corrections institutions, youth corrections institutions, and mental health and mental retardation institutions and for the expansion of statewide law enforcement facilities."

The amendment was read.

Senator McFarland moved to concur in the House amendment to **S.J.R. 24**.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Parker, Parmer, Washington.

SENATE BILL 1046 WITH HOUSE AMENDMENT

Senator McFarland called **S.B. 1046** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment - Laney

Amend **S.B. 1046** by striking all below the enacting clause and substituting in lieu thereof the following:

ARTICLE 1. GENERAL PROVISIONS

SECTION 1.01.

This Act is enacted as part of the state's continuing statutory revision program under Chapter 323, Government Code. This Act is a revision for purposes of Article III, Section 43, of the Texas Constitution and has the purposes of:

(1) codifying without substantive change various statutes that were omitted from enacted codes;

(2) conforming codifications enacted by the 70th Legislature to other Acts of that legislature that amended the laws codified or added new law to subject matter codified;

(3) making necessary corrections to enacted codifications; and

(4) renumbering titles, chapters, and sections of codes that duplicate title, chapter, or section numbers.

SECTION 1.02. (a) The repeal of a statute by this Act does not affect an amendment, revision, or reenactment of the statute by the 71st Legislature, Regular Session, 1989. The amendment, revision, or reenactment is preserved and given effect as part of the code provision that revised the statute so amended, revised, or reenacted.

(b) If any provision of this Act conflicts with a statute enacted by the 71st Legislature, Regular Session, 1989, the statute controls.

SECTION 1.03. (a) A transition or saving provision of a law codified by this Act applies to the codified law to the same extent as it applied to the original law.

(b) The repeal of a transition or saving provision by this Act does not affect the application of the provision to the codified law.

(c) In this section, "transition" provision includes any temporary provision providing for a special situation in the transition period between the existing law and the establishment or implementation of the new law.

ARTICLE 2. CHANGES RELATING TO CODE OF CRIMINAL PROCEDURE

SECTION 2.01. Subsection (c), Section 10, Article 42.12, Code of Criminal Procedure, is amended to conform to Section 11, Chapter 1101, Acts of the 70th Legislature, Regular Session, 1987, to read as follows:

(c) To be eligible for appointment as an adult probation officer, a person who is not an adult probation officer on the effective date of this Act:

(1) must have acquired a bachelor's degree conferred by a college or university accredited by an accrediting organization recognized by the Coordinating Board, Texas College and University System; and

(A) one year of graduate study in criminology, corrections, counseling, law, social work, psychology, sociology, or a related field that has been approved by the Texas Adult Probation Commission; or

(B) one year of experience in full-time case work, counseling, or community or group work in a social, community, corrections, or juvenile agency that deals with offenders or disadvantaged persons that has been approved by the Texas Adult Probation Commission; and

(2) must not be otherwise disqualified by Section 22 [~~24~~] of Article 42.18 of this code.

SECTION 2.02. Subsection (k), Section 10, Article 42.12, Code of Criminal Procedure, is amended to conform to the enactment of the Civil Practice and Remedies Code, to read as follows:

(k) Persons employed as district personnel under Subsection (a) of this section are state employees for the purposes of Chapter 104, Civil Practice and Remedies Code [~~309, Acts of the 64th Legislature, 1975 (Article 6252-26, Vernon's Texas Civil Statutes)~~], and Article 8309g, Revised Statutes.

ARTICLE 3. CHANGES RELATING TO EDUCATION CODE

SECTION 3.01. Section 11.207, Education Code, as added by Chapter 848, Acts of the 70th Legislature, Regular Session, 1987, is renumbered as Section 11.2081, Education Code, to eliminate duplicate citations.

ARTICLE 4. CHANGES RELATING TO FAMILY CODE

SECTION 4.01. Subsection (a), Section 34.02, Family Code, as amended by Section 6.06, Chapter 1052, and Section 1, Chapter 1055, Acts of the 70th Legislature, Regular Session, 1987, is amended to delete duplicate subdivision numbers to read as follows:

(a) Nonaccusatory reports reflecting the reporter's belief that a child has been or will be abused or neglected, or has died of abuse or neglect, has violated the compulsory school attendance laws on three or more occasions, or has, on three or more occasions, been voluntarily absent from his home without the consent of his parent or guardian for a substantial length of time or without the intent to return shall be made to:

(1) any local or state law enforcement agency;

(2) the Texas Department of Human Services; [~~or~~]

(3) the state agency that operates, licenses, certifies, or registers the facility in which the alleged abuse or neglect occurred; or

(4) [~~(3)~~] the agency designated by the court to be responsible for the protection of children.

SECTION 4.02. Subsection (a), Section 34.05, Family Code, as amended by Section 2, Chapter 620, and Section 6.08, Chapter 1052, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

(a) Unless the report alleges that the abuse or neglect occurred in a facility operated, licensed, certified, or registered by another state agency, the [~~The~~] Texas Department of Human Services or the agency designated by the court to be responsible for the protection of children shall make a thorough investigation promptly after receiving either the oral or written report, or if the report is anonymous, after determining that there is some evidence to corroborate the report as prescribed by Section 34.053 of this code. If the report alleges that the abuse or neglect occurred in a facility operated, licensed, certified, or registered by another state agency, that agency shall investigate the report as prescribed by Subchapter B of this chapter. The department may assign priorities to investigations based on the severity and immediacy of the alleged harm to the child. If the department establishes a priority system, the department shall adopt the system by rule. The primary purpose of the investigation shall be the protection of the child.

SECTION 4.03. Subsection (e), Section 51.03, Family Code, as added by Chapter 955, Acts of the 70th Legislature, Regular Session, 1987, is renumbered as Subsection (f), Section 51.03, Family Code, to eliminate duplicate citations.

ARTICLE 5. CHANGES RELATING TO GOVERNMENT CODE

SECTION 5.01. The changes in the Government Code made by this Article take effect September 1, 1989.

SECTION 5.02. (a) Section 11.103(b), Title 110B, Revised Statutes, as amended by House Bill 800, 71st Legislature, Regular Session, 1989, is transferred to the Government Code and designated as Section 801.103(b).

(b) If House Bill 800, 71st Legislature, Regular Session, 1989, does not become law, this section has no effect.

SECTION 5.03. (a) Section 24.505, Title 110B, Revised Statutes, as added by Senate Bill 46, 71st Legislature, Regular Session, 1989, is transferred to the Government Code and designated as Section 814.505. The following references in that section are changed as follows:

(1) references to "Section 24.108" are changed to "Section 814.108";

(2) the reference to "Section 24.302" is changed to "Section 814.302";

(3) the reference to "Section 24.304" is changed to "Section 814.304"; and

(4) references to "of this section" and "of this subtitle" are deleted.

(b) If Senate Bill 46, 71st Legislature, Regular Session, 1989, does not become law, this section has no effect.

SECTION 5.04. (a) Section 25.202(f), Title 110B, Revised Statutes, as added by House Bill 1632, 71st Legislature, Regular Session, 1989, is transferred to the Government Code and designated as Section 815.202(f).

(b) If House Bill 1632, 71st Legislature, Regular Session, 1989, does not become law, this section has no effect.

SECTION 5.05. (a) Sections 25.301(b) and 75.301(a), Title 110B, Revised Statutes, as amended by Senate Bill 540, 71st Legislature, Regular Session, 1989, are transferred to the Government Code and designated, respectively, as Sections 815.301(b) and 840.301(a). The reference in Section 25.301(b) to "Section 25.304" is changed to "Section 815.307." The reference in Section 75.301(a) to "Section 75.303" is changed to "Section 840.303." All references in Sections 25.301(b) and 75.301(a) to "of this subtitle" are deleted.

(b) Sections 815.306 and 840.302, Government Code, are repealed.

(c) Effective September 1, 1989, the references in Section 16(c) and Section 16B(e), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), to "Section 25.304, Title 110B, Revised Statutes" are changed to "Section 815.307, Government Code."

(d) If Senate Bill 540, 71st Legislature, Regular Session, 1989, does not become law, this section has no effect.

SECTION 5.06. Section 75.105, Title 110B, Revised Statutes, as added by House Bill 539, 71st Legislature, Regular Session, 1989, is transferred to the Government Code and designated as Section 840.105. The references in that section to "Section 75.102" are changed to "Section 840.102." All references in that section to "of this subtitle" or "of this section" are deleted.

SECTION 5.07. (a) Section 63.303, Title 110B, Revised Statutes, as added by Senate Bill 499, 71st Legislature, Regular Session, 1989, is transferred to the Government Code and designated as Section 853.303. The following references in that section are changed as follows:

(1) the reference to "Section 63.105" is changed to "Section 853.105";

(2) the reference to "Section 63.106" is changed to "Section 853.106"; and

(3) references to "of this subtitle" are deleted.

(b) If Senate Bill 499, 71st Legislature, Regular Session, 1989, does not become law, this section has no effect.

ARTICLE 6. REPEALER

SECTION 6.01. Section 2.01, Senate Bill No. 221, Acts of the 71st Legislature, Regular Session, 1989, does not take effect and Section 58.031, Agriculture Code, which was contingent on the adoption by the voters of the constitutional amendment proposed by **H.J.R No. 4**, 70th Legislature, Regular Session, 1987, is repealed because that constitutional amendment was not adopted.

ARTICLE 7. EMERGENCY

SECTION 7.01. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Amendment on Third Reading - Laney

Amend **C.S.S.B. 1046**, second reading engrossment, by striking all below the enacting clause and substituting the following:

ARTICLE 1. GENERAL PROVISIONS

SECTION 1.01.

This Act is enacted as part of the state's continuing statutory revision program under Chapter 323, Government Code. This Act is a revision for purposes of Article III, Section 43, of the Texas Constitution and has the purposes of:

(1) codifying without substantive change various statutes that were omitted from enacted codes;

(2) conforming codifications enacted by the 70th Legislature to other Acts of that legislature that amended the laws codified or added new law to subject matter codified;

(3) making necessary corrections to enacted codifications; and

(4) renumbering titles, chapters, and sections of codes that duplicate title, chapter, or section numbers.

SECTION 1.02. (a) The repeal of a statute by this Act does not affect an amendment, revision, or reenactment of the statute by the 71st Legislature, Regular Session, 1989. The amendment, revision, or reenactment is preserved and given effect as part of the code provision that revised the statute so amended, revised, or reenacted.

(b) If any provision of this Act conflicts with a statute enacted by the 71st Legislature, Regular Session, 1989, the statute controls.

SECTION 1.03. (a) A transition or saving provision of a law codified by this Act applies to the codified law to the same extent as it applied to the original law.

(b) The repeal of a transition or saving provision by this Act does not affect the application of the provision to the codified law.

(c) In this section, "transition" provision includes any temporary provision providing for a special situation in the transition period between the existing law and the establishment or implementation of the new law.

ARTICLE 2. CHANGES RELATING TO EDUCATION CODE

SECTION 2.01. Section 11.207, Education Code, as added by Chapter 848, Acts of the 70th Legislature, Regular Session, 1987, is renumbered as Section 11.2081, Education Code, to eliminate duplicate citations.

ARTICLE 3. CHANGES RELATING TO FAMILY CODE

SECTION 3.01. Subsection (a), Section 34.02, Family Code, as amended by Section 6.06, Chapter 1052, and Section 1, Chapter 1055, Acts of the 70th Legislature, Regular Session, 1987, is amended to delete duplicate subdivision numbers to read as follows:

(a) Nonaccusatory reports reflecting the reporter's belief that a child has been or will be abused or neglected, or has died of abuse or neglect, has violated the compulsory school attendance laws on three or more occasions, or has, on three or more occasions, been voluntarily absent from his home without the consent of his parent or guardian for a substantial length of time or without the intent to return shall be made to:

(1) any local or state law enforcement agency;

(2) the Texas Department of Human Services; [~~or~~]

(3) the state agency that operates, licenses, certifies, or registers the facility in which the alleged abuse or neglect occurred; or

(4) [~~(3)~~] the agency designated by the court to be responsible for the protection of children.

SECTION 3.02. Subsection (e), Section 51.03, Family Code, as added by Chapter 955, Acts of the 70th Legislature, Regular Session, 1987, is renumbered as Subsection (f), Section 51.03, Family Code, to eliminate duplicate citations.

ARTICLE 4. CHANGES RELATING TO GOVERNMENT CODE

SECTION 4.01. Except as provided by Section 4.12 of this article the changes in the Government Code made by Sections 4.03-4.11 of this article take effect September 1, 1989.

SECTION 4.02. (a) Section 25.1902(h), Government Code, as amended by Section 8.18(e), Chapter 2, Acts of the 71st Legislature, Regular Session, 1989, is amended to conform more closely to law from which it was derived to read as follows:

(h) A judge of a county court at law may [~~shall~~] be paid an annual salary that is at least equal to the amount that is $1,000 less than the total salary paid the district judge in the county. The commissioners court shall pay the salary out of the county's general fund.

(b) Any other provision of an Act of the 71st Legislature, Regular Session, 1989, other than Chapter 2 of that session, prevails over the amendment in Subsection (a) of this section.

SECTION 4.03. (a) Section 11.103(b), Title 110B, Revised Statutes, as amended by House Bill 800, 71st Legislature, Regular Session, 1989, is transferred to the Government Code and designated as Section 801.103(b).

(b) If House Bill 800, 71st Legislature, Regular Session, 1989, does not become law, this section has no effect.

SECTION 4.04. (a) Section 24.505, Title 110B, Revised Statutes, as added by Senate Bill 46, 71st Legislature, Regular Session, 1989, is transferred to the Government Code and designated as Section 814.505. The following references in that section are changed as follows:

(1) references to "Section 24.108" are changed to "Section 814.108";

(2) the reference to "Section 24.302" is changed to "Section 814.302";

(3) the reference to "Section 24.304" is changed to "Section 814.304"; and

(4) references to "of this section" and "of this subtitle" are deleted.

(b) If Senate Bill 46, 71st Legislature, Regular Session, 1989, does not become law, this section has no effect.

SECTION 4.05. (a) Section 25.202(f), Title 110B, Revised Statutes, as added by House Bill 1632, 71st Legislature, Regular Session, 1989, is transferred to the Government Code and designated as Section 815.202(f).

(b) If House Bill 1632, 71st Legislature, Regular Session, 1989, does not become law, this section has no effect.

SECTION 4.06. (a) Sections 25.301(b) and 75.301(a), Title 110B, Revised Statutes, as amended by Senate Bill 540, 71st Legislature, Regular Session, 1989, are transferred to the Government Code and designated, respectively, as Sections 815.301(b) and 840.301(a). The reference in Section 25.301(b) to "Section 25.304" is changed to "Section 815.307." The reference in Section 75.301(a) to "Section 75.303" is changed to "Section 840.303." All references in Sections 25.301(b) and 75.301(a) to "of this subtitle" are deleted.

(b) Sections 815.306 and 840.302, Government Code, are repealed.

(c) Effective September 1, 1989, the references in Section 16(c) and Section 16B(e), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), to "Section 25.304, Title 110B, Revised Statutes" are changed to "Section 815.307, Government Code."

(d) If Senate Bill 540, 71st Legislature, Regular Session, 1989, does not become law, this section has no effect.

SECTION 4.07. Section 75.105, Title 110B, Revised Statutes, as added by House Bill 539, 71st Legislature, Regular Session, 1989, is transferred to the Government Code and designated as Section 840.105. The references in that section to "Section 75.102" are changed to "Section 840.102." All references in that section to "of this subtitle" or "of this section" are deleted.

SECTION 4.08. (a) Section 63.303, Title 110B, Revised Statutes, as added by Senate Bill 499, 71st Legislature, Regular Session, 1989, is transferred to the Government Code and designated as Section 853.303. The following references in that section are changed as follows:

(1) the reference to "Section 63.105" is changed to "Section 853.105";

(2) the reference to "Section 63.106" is changed to "Section 853.106"; and

(3) references to "of this subtitle" are deleted.

(b) If Senate Bill 499, 71st Legislature, Regular Session, 1989, does not become law, this section has no effect.

SECTION 4.09. (a) Section 24.105, Title 110B, Revised Statutes, as amended by **S.B No. 58**, Acts of the 71st Legislature, Regular Session, 1989, is transferred to the Government Code and designated as Section 814.105. Each reference in Subsections (c) and (d) of that section to "of this section" is deleted.

(b) If **S.B No. 58**, Acts of the 71st Legislature, Regular Session, 1989, does not become law, this section has no effect.

SECTION 4.10. (a) Section 23.509, Title 110B, Revised Statutes, as added by **H.B No. 827**, Acts of the 71st Legislature, Regular Session, 1989, is transferred to the Government Code and designated as Section 813.509. The reference in Subsection (c) of that section to "of this section" is deleted.

(b) If **H.B No. 827**, Acts of the 71st Legislature, Regular Session, 1989, does not become law, this section has no effect.

SECTION 4.11. (a) Sections 34.202(c) and (d), Title 110B, Revised Statutes, as amended by Section 1, **H.B No. 85**, Acts of the 71st Legislature, Regular Session, 1989, are transferred to the Government Code and designated as Sections 824.202(c) and (d). The references in those subsections to "of this section" are deleted.

(b) Subchapter H, Chapter 34, and Section 34.701, Title 110B, Revised Statutes, as added by Section 5, **H.B No. 85**, Acts of the 71st Legislature, Regular Session, 1989, are transferred to the Government Code and designated, respectively, as Subchapter H of Chapter 824 and Section 824.701. The reference in Subsection (a)(1) of that section to "of this chapter" is deleted. The reference in Subsection (a)(2) of that section to "Section 34.005 of this chapter" is changed to "Section 824.005." The reference in Subsection (a)(3) of that section to "Section 34.301 of this chapter" is changed to "Section 824.301." The reference in Subsection (a)(4) of that section to "of this chapter" is deleted.

(c) If **H.B No. 85**, Acts of the 71st Legislature, Regular Session, 1989, does not become law, this section has no effect.

SECTION 4.12. If **S.B No. 1045**, Acts of the 71st Legislature, Regular Session, 1989, does not become law, Sections 4.03-4.11 have no effect.

ARTICLE 5. CHANGES RELATING TO HEALTH AND SAFETY CODE

SECTION 5.01. (a) The changes to the Health and Safety Code made by this article take effect September 1, 1989.

(b) If **H.B No. 2136**, Acts of the 71st Legislature, Regular Sesssion, 1989, does not become law, this article has no effect.

SECTION 5.02. (a) Section 483.001(3), Health and Safety Code, is amended to conform to Section 1, **S.B No. 29**, Acts of the 71st Legislature, Regular Session, 1989, and to read as follows:

(3) "Dangerous drug" means a device or a drug that is unsafe for self-medication and that is not included in Schedules I through V or Penalty Groups 1 through 4 of Chapter 481 (Texas Controlled Substances Act). The term includes a device or a drug, including an anabolic steroid or human growth hormone, that bears or is required to bear the legend:

(A) Caution: federal law prohibits dispensing without prescription; or

(B) Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian.

(b) Sections 481.002(9), (17), and (41), Health and Safety Code, are amended to conform to Sections 2-4, **S.B No. 29**, Acts of the 71st Legislature, Regular Session, 1989, and to read as follows:

(9) "Delivery" or "drug transaction" means the act of delivering.

(17) "Drug paraphernalia" means equipment, a product, or material that is used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, or concealing a controlled substance in violation of this chapter or in injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter. The term includes:

(A) a kit used or intended for use in planting, propagating, cultivating, growing, or harvesting a species of plant that is a controlled substance or from which a controlled substance may be derived;

(B) a material, compound, mixture, preparation, or kit used or intended for use in manufacturing, compounding, converting, producing, processing, or preparing a controlled substance;

(C) an isomerization device used or intended for use in increasing the potency of a species of plant that is a controlled substance;

(D) testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness, or purity of a controlled substance;

(E) a scale or balance used or intended for use in weighing or measuring a controlled substance;

(F) a diluent or adulterant, such as quinine hydrochloride, mannitol, mannite, dextrose, or lactose, used or intended for use in cutting a controlled substance;

(G) a separation gin or sifter used or intended for use in removing twigs and seeds from or in otherwise cleaning or refining marihuana;

(H) a blender, bowl, container, spoon, or mixing device used or intended for use in compounding a controlled substance;

(I) a capsule, balloon, envelope, or other container used or intended for use in packaging small quantities of a controlled substance;

(J) a container or other object used or intended for use in storing or concealing a controlled substance;

(K) a hypodermic syringe, needle, or other object used or intended for use in parenterally injecting a controlled substance into the human body; and

(L) an object used or intended for use in ingesting, inhaling, or otherwise introducing marihuana, cocaine, hashish, or hashish oil into the human body, including:

(i) a metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without a screen, permanent screen, hashish head, or punctured metal bowl;

(ii) a water pipe;

(iii) a carburetion tube or device;

(iv) a smoking or carburetion mask;

(v) a chamber pipe;

(vi) a carburetor pipe;

(vii) an electric pipe;

(viii) an air-driven pipe;

(ix) a chillum;

(x) a bong; or

(xi) an ice pipe or chiller.

(41) "Prescription" means an order by a practitioner to a pharmacist for a controlled substance for a particular patient that specifies:

(A) the date of issue;

(B) the name and address of the patient or, if the controlled substance is prescribed for an animal, the species of the animal and the name and address of its owner;

(C) the name and quantity of the controlled substance prescribed with the quantity shown numerically followed by the number written as a word if the order is written or, if the order is communicated orally or telephonically, with the quantity given by the practitioner and transcribed by the pharmacist numerically; and

(D) directions for the use of the drug.

(c) Section 481.032(a), Health and Safety Code, is amended to conform to Section 5, **S.B No. 29**, Acts of the 71st Legislature, Regular Session, 1989, and to read as follows:

(a) Schedule I consists of:

(1) the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, if the existence

of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

Alfentanil;
Allylprodine;
Alpha-methylfentanyl or another derivative of Fentanyl;
Benzethidine;
Betaprodine;
Clonitazene;
Diampromide;
Diethylthiambutene;
Difenoxin;
Dimenoxadol;
Dimethylthiambutene;
Dioxaphetyl butyrate;
Dipipanone;
Ethylmethylthiambutene;
Etonitazene;
Etoxeridine;
Furethidine;
Hydroxypethidine;
Ketobemidone;
Levophenacylmorphan;
Meprodine;
Methadol;
Moramide;
Morpheridine;
Noracymethadol;
Norlevorphanol;
Normethadone;
Norpipanone;
Phenadoxone;
Phenampromide;
Phencyclidine;
Phenomorphan;
Phenoperidine;
Piritramide;
Proheptazine;
Properidine;
Propiram;
Tilidine; and
Trimeperidine;

(2) the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

Acetorphine;
Acetyldihydrocodeine;
Benzylmorphine;
Codeine methylbromide;
Codeine-N-Oxide;
Cyprenorphine;
Desomorphine;
Dihydromorphine;
Drotebanol;

Etorphine (except hydrochloride salt);
Heroin;
Hydromorphinol;
Methyldesorphine;
Methyldihydromorphine;
Monoacetylmorphine;
Morphine methylbromide;
Morphine methylsulfonate;
Morphine-N-Oxide;
Myrophine;
Nicocodeine;
Nicomorphine;
Normorphine;
Pholcodine; and
Thebacon;

(3) unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances or that contains any of the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

4-bromo-2, 5-dimethoxyamphetamine (some trade or other names: 4-bromo-2, 5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2, 5-DMA);

2, 5-dimethoxyamphetamine (some trade or other names: 2, 5-dimethoxy-alpha-methylphenethylamine; 2, 5-DMA);

5-methoxy-3, 4-methylenedioxy amphetamine;

4-methoxyamphetamine (some trade or other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA);

1-methyl-4-phenyl-1, 2, 5, 6-tetrahydro-pyridine (MPTP);

1-methyl-4-phenyl-4-propionoxy-piperidine (MPPP, PPMP);

4-methyl-2, 5-dimethoxyamphetamine (some trade and other names: 4-methyl-2, 5-dimethoxy-alpha-methylphenethylamine; "DOM"; and "STP");

3, 4-methylene-dioxy methamphetamine (MDMA, MDM);

3, 4-methylenedioxy amphetamine;

3, 4, 5-trimethoxy amphetamine;

Bufotenine (some trade and other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N, N-dimethyltryptamine; mappine);

Diethyltryptamine (some trade and other names:
N, N-Diethyltryptamine, DET);

Dimethyltryptamine (some trade and other names: DMT);

Ethylamine Analog of Phencyclidine (some trade or other names: N-ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl) ethylamine; N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE);

Ibogaine (some trade or other names: 7-Ethyl-6, 6, beta, 7, 8, 9, 10, 12, 13, -octahydro-2-methoxy-6, 9-methano-5H-pyrido [1', 2':1, 2] azepino [5, 4-b] indole; tabernanthe iboga);

Lysergic acid diethylamide;

Marihuana;

Mescaline;

N-ethyl-3-piperidyl benzilate;

N-methyl-3-piperidyl benzilate;

Parahexyl (some trade or other names: 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-tri-methyl-6H-dibenzo [b,d] pyran; Synhexyl);

Peyote, unless unharvested and growing in its natural state, meaning all parts of the plant classified botanically as Lophophora, whether growing or not, the seeds of the plant, an extract from a part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or extracts;

Psilocybin;

Psilocin;

Pyrrolidine Analog of Phencyclidine (some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP);

Synthetic equivalents of the substances contained in the plant Cannabis, or in the resinous extractives of that plant, and synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as:

delta-1 cis or trans tetrahydrocannabinol, and their optical isomers;

delta-6 cis or trans tetrahydrocannabinol, and their optical isomers;

delta-3, 4 cis or trans tetrahydrocannabinol, and its optical isomers;

(Compounds of these structures, regardless of numerical designation of atomic positions, since nomenclature of these substances is not internationally standardized);

Tetrahydrocannabinols; and

Thiophene Analog of Phencyclidine (some trade or other names: 1-[1-(2-thienyl) cyclohexyl] piperidine; 2-Thienyl Analog of Phencyclidine; TPCP); [and]

(4) unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant or stimulant effect on the central nervous system, including the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

Fenethylline;

Mecloqualone;

Methaqualone;

N-ethylamphetamine; and

Nitrazepam; and

(5) temporary listing of substances subject to emergency scheduling by the Federal Drug Enforcement Administration, and any material, compound, mixture, or preparation that contains any quantity of the following substances:

N,N-dimethylamphetamine (Some trade or other names: N,N,alpha-trimethylbenzeneethaneamine; N,N,alpha-trimethylphenethylamine; including its salts, optical isomers, and salts of optical isomers);

4-methylaminorex;

3,4-methylenedioxy N-ethylamphetamine (Also known as N-ethyl MDA);

N-hydroxy-3,4-methylenedioxyamphetamine (Also known as N-hydroxy MDA).

(d) Section 481.036, Health and Safety Code, is amended to conform to Section 6, **S.B No. 29**, Acts of the 71st Legislature, Regular Session, 1989, and to read as follows:

Sec. 481.036. SCHEDULE V. Schedule V consists of a controlled substance that is a compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs that also contain one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer on the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;

(2) not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;

(3) not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;

(4) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) not more than 15 milligrams of opium per 29.5729 milliliters or per 28.35 grams; and

(6) not more than 0.5 milligrams of difenoxin and not less than 25 micrograms [~~milligrams~~] of atropine sulfate per dosage unit.

(e) Subchapter C, Chapter 481, Health and Safety Code, is amended by adding Section 481.0621 to conform to Section 7, **S.B No. 29**, Acts of the 71st Legislature, Regular Session, 1989, and to read as follows:

Sec. 481.0621. EXCEPTIONS. (a) This subchapter does not apply to an educational or research program of a private school, a school district, or a public or private institution of higher education. This subchapter does not apply to a manufacturer, wholesaler, retailer, or other person who sells, transfers, or furnishes materials covered by this subchapter to those educational or research programs.

(b) The department and the Texas Higher Education Coordinating Board shall adopt a memorandum of understanding that establishes the responsibilities of the board, the department, and the public or private institutions of higher education in implementing and maintaining a program for reporting information concerning controlled substances, controlled substance analogues, chemical precursors, and chemical laboratory apparatus used in educational or research activities of institutions of higher education.

(c) The department and the Central Education Agency shall adopt a memorandum of understanding that establishes the responsibilities of the agency, the department, private schools, and school districts in implementing and maintaining a program for reporting information concerning controlled substances, controlled substance analogues, chemical precursors, and chemical laboratory apparatus used in educational or research activities of those schools and school districts.

(f) Section 481.063, Health and Safety Code, is amended by amending Subsection (e) and adding Subsection (h) to conform to Sections 8 and 9, **S.B No. 29**, Acts of the 71st Legislature, Regular Session, 1989, and to read as follows:

(e) An application for registration to manufacture, distribute, analyze, or dispense a controlled substance may be denied on a finding that the applicant:

(1) has furnished false or fraudulent material information in an application filed under this chapter;

(2) has been convicted of a felony;

(3) has had suspended, denied, or revoked a registration or application for registration to manufacture, distribute, analyze, or dispense controlled substances under the Federal Controlled Substances Act;

(4) has had suspended or revoked a practitioner's license under the laws of this state;

(5) has failed to establish and maintain effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels as provided by federal regulations or laws;

(6) has wilfully failed to maintain records required to be kept or has wilfully or unreasonably refused to allow an inspection authorized by this chapter; or

(7) has violated this chapter or a rule adopted under this chapter.

(h) The Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) does not apply to a denial, suspension, or revocation of a registration under Subsection (e)(3).

(g) Section 481.069, Health and Safety Code, is amended to conform to Section 10, **S.B No. 29**, Acts of the 71st Legislature, Regular Session, 1989, and to read as follows:

Sec. 481.069. ORDER FORMS. A registrant may not distribute or order a controlled substance listed in Schedule I or II to or from another registrant except [~~only~~] under an order form. A registrant complying with the federal law concerning order forms is in compliance with this section.

(h) Section 481.074, Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (i) to conform to Sections 11 and 12, **S.B No. 29**, Acts of the 71st Legislature, Regular Session, 1989, and to read as follows:

(a) A pharmacist may not:

(1) dispense or deliver a controlled substance or cause a controlled substance to be dispensed or delivered under the pharmacist's direction or supervision except under a valid prescription and in the course of professional practice; [~~or~~]

(2) fill a prescription that is not prepared or issued as prescribed by this chapter;

(3) permit or allow a person who is not a licensed pharmacist or pharmacist intern to dispense, distribute, or in any other manner deliver a controlled substance even if under the supervision of a pharmacist, except that after the pharmacist or pharmacist intern has fulfilled his professional and legal responsibilities, a nonpharmacist may complete the actual cash or credit transaction and delivery; or

(4) permit the delivery of a controlled substance to any person not known to the pharmacist, the pharmacist intern, or the person authorized by the pharmacist to deliver the controlled substance without first requiring identification of the person taking possession of the controlled substance; if the person taking possession of the controlled substance does not have identification and the pharmacist determines that the controlled substance is needed for the immediate well-being of the patient, delivery may be made; this subsection does not prohibit the delivery by mail or authorized delivery person of a controlled substance to a person or the address of the person authorized by prescription to receive that controlled substance.

(i) A prescription for a controlled substance must show:

(1) the quantity of the substance prescribed numerically followed by the number written as a word if the prescription is written; or

(2) if the prescription is communicated orally or telephonically, the quantity of the substance prescribed numerically as transcribed by the receiving pharmacist.

(i) Section 481.075(d), Health and Safety Code, is amended to conform to Section 13, **S.B. No. 29**, Acts of the 71st Legislature, Regular Session, 1989, and to read as follows:

(d) Except for oral prescriptions prescribed under Section 481.074(b), the prescribing practitioner shall:

(1) legibly fill in, or direct a designated agent to legibly fill in, on all three copies of the form in the space provided:

(A) the date the prescription is written;

(B) the drug prescribed, the quantity (shown numerically followed by the number written as a word) [~~dosage~~], and instructions for use; and

(C) the name, address, and age of the patient or, in the case of an animal, its owner, for whom the controlled substance is prescribed;

(2) sign Copies 1 and 2 of the form and give them to the person authorized to receive the prescription; and

(3) retain Copy 3 of the form with the practitioner's records for at least two years after the date the prescription is written.

(j) Section 481.124, Health and Safety Code, is repealed to conform to Section 14, **S.B No. 29**, Acts of the 71st Legislature, Regular Session, 1989.

(k) Section 481.077, Health and Safety Code, is amended to conform to Section 14, **S.B. No. 29**, Acts of the 71st Legislature, Regular Session, 1989, and to read as follows:

Sec. 481.077. CHEMICAL PRECURSOR RECORDS AND REPORTS. (a) Except as provided by Subsection (l) [(g)], a person who sells, transfers, or otherwise furnishes any of the following precursor substances to a person shall make an accurate and legible record of the transaction and maintain the record for at least two years after the date of the transaction:

(1) Methylamine;
(2) Ethylamine;
(3) D-lysergic acid;
(4) Ergotamine tartrate;
(5) Diethyl malonate;
(6) Malonic acid;
(7) Ethyl malonate;
(8) Barbituric acid;
(9) Piperidine;
(10) N-acetylanthranilic acid;
(11) Pyrrolidine;
(12) Phenylacetic acid;
(13) Anthranilic acid;
(14) Morpholine;
(15) Ephedrine;
(16) Pseudoephedrine or norpseudoephedrine; or
(17) Phenylpropanolamine.

(b) The director by rule may name additional substances as precursors for purposes of Subsection (a) if public health and welfare are jeopardized by evidenced proliferation of a chemical substance used in the illicit manufacture of a controlled substance or controlled substance analogue. The director by rule may delete a substance named as a precursor for purposes of Subsection (a) if the director determines that the substance does not jeopardize public health and welfare or is not used in the illicit manufacture of a controlled substance or a controlled substance analogue.

(c) The Department of Public Safety shall file with the secretary of state a certified copy of a rule adopted under this section.

(d) Before selling, transferring, or otherwise furnishing to a person in this state a precursor substance subject to Subsection (a), a manufacturer, wholesaler, retailer, or other person shall:

(1) if the recipient does not represent a business, obtain from the recipient:

(A) the recipient's driver's license number or other personal identification certificate number, date of birth, and residential or mailing address, other than a post office box number, from a driver's license or personal identification card issued by the Department of Public Safety that contains a photograph of the recipient;

(B) the year, state, and number of the motor vehicle license of the motor vehicle owned or operated by the recipient;

(C) a complete description of how the substance is to be used; and

(D) the recipient's signature; or

(2) if the recipient represents a business, obtain from the recipient:

(A) a letter of authorization from the business that includes the business license or comptroller tax identification number, address, area code, and telephone number and a complete description of how the substance is to be used; and

(B) the recipient's signature; and

(3) for any recipient, sign as a witness to the signature and identification of the recipient.

(e) If the recipient does not represent a business, the recipient shall present to the manufacturer, wholesaler, retailer, or other person a permit issued in the name of the recipient by the Department of Public Safety under Section 481.078.

(f) Except as provided by Subsection (h), a manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes to a person in this state a precursor substance subject to Subsection (a) shall submit, at least 21 days before the delivery of the substance, a report of the transaction on a form obtained from the director that includes the information required by Subsection (d).

(g) The director shall supply to a manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes a precursor substance subject to Subsection (a) a form for the submission of:

(1) the report required by Subsection (f);

(2) the name and measured amount of the precursor substance delivered; and

(3) any other information required by the director.

(h) The director may authorize a manufacturer, wholesaler, retailer, or other person to submit a comprehensive monthly report instead of the report required by Subsection (f) if the director determines that:

(1) there is a pattern of regular supply and purchase of the substance between the furnisher and the recipient; or

(2) the recipient has established a record of use of the substance solely for a lawful purpose.

(i) A manufacturer, wholesaler, retailer, or other person who receives from a source outside this state a substance subject to Subsection (a) or who discovers a loss or theft of a substance subject to Subsection (a) shall:

(1) submit a report of the transaction to the director in accordance with department rule; and

(2) include in the report:

(A) any difference between the amount of the substance actually received and the amount of the substance shipped according to the shipping statement or invoice; or

(B) the amount of the loss or theft.

(j) A report under Subsection (i) must:

(1) be made not later than the third day after the date that the manufacturer, wholesaler, retailer, or other person learns of the discrepancy, loss, or theft; and

(2) if the discrepancy, loss, or theft occurred during a shipment of the substance, include the name of the common carrier or person who transported the substance and the date that the substance was shipped.

[~~The director by rule may name additional substances as precursors for the purposes of recordkeeping under Subsection (a) if public health and welfare are jeopardized by evidenced proliferation of a chemical substance used in the illegal manufacture of a controlled substance.~~

[~~(c) A record made under Subsection (a) must include:~~

[~~(1) the name and address of the recipient;~~

[~~(2) if the recipient is acting on behalf of a business or another person, the name and address of the business or other person;~~

[~~(3) if the recipient represents a business, the nature of the business;~~

[~~(4) the name, description, and amount of the precursor substance that was received; and~~

[~~(5) if the recipient does not represent an established business, the following identifying information:~~

[~~(A) the recipient's driver's license number or other official state-issued identification of the recipient that includes a photograph and the home address of the recipient, other than a post office box number;~~

[~~(B) the license plate number of a motor vehicle owned or operated by the recipient; and~~

[~~(C) a description, obtained from the recipient, of how the substance is to be used.~~

[~~(d) A person who sells, transfers, or otherwise furnishes a substance subject to Subsection (a) shall allow a peace officer to inspect all records made in accordance with this section at any reasonable time and may not interfere with the complete inspection or copying of those records.~~

[~~(e) A person who sells, transfers, or otherwise furnishes a precursor substance subject to Subsection (a) shall file a written report with the director that includes:~~

[~~*(1) the name and address of the recipient*;~~

[~~(2) if the recipient is acting on behalf of a business or another person, the name and address of the business or person; and~~

[~~(3) the name of the executive head and the telephone number of the business if a business is the recipient.~~

[~~(f) A person who files a report under Subsection (e) and who subsequently becomes aware of a change in the information previously reported must file with the director a written notice of the change as soon as possible.~~]

(k) A manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any substance subject to Subsection (a) shall maintain records and inventories in accordance with rules established by the director and shall allow a peace officer to conduct audits and inspect records of purchases and all other records made in accordance with this section at any reasonable time and may not interfere with the audit or with the full and complete inspection or copying of those records. This subsection does not apply to a recipient who has obtained a precursor substance subject to Subsection (a) and who is a permit holder under Section 481.078.

(l) [~~(g)~~] This section does not apply to the sale or transfer of a nonnarcotic product that includes a precursor substance subject to Subsection (a) if the product may be sold lawfully with a prescription or over the counter without a prescription under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), or a rule adopted under that Act.

(l) Subchapter C, Chapter 481, Health and Safety Code, is amended by adding Sections 481.078-481.082 to conform to Sections 15-19, **S.B No. 29**, Acts of the 71st Legislature, Regular Session, 1989, and to read as follows:

Sec. 481.078. CHEMICAL PRECURSOR TRANSFER PERMIT. (a) A person must obtain a chemical precursor transfer permit from the Department of Public Safety to be eligible:

(1) to sell, transfer, or otherwise furnish a precursor substance subject to Section 481.077(a) to a person in this state;

(2) to receive a precursor substance subject to Section 481.077(a) from a source outside this state; or

(3) to receive a precursor substance subject to Section 481.077(a) if the person, in receiving the substance, does not represent a business.

(b) The Department of Public Safety by rule shall develop procedures for the issuance and renewal of:

(1) a permit for one sale, transfer, receipt, or otherwise furnishing of a controlled substance precursor; or

(2) a permit for more than one sale, transfer, receipt, or otherwise furnishing of a controlled substance precursor.

(c) A permit issued or renewed under Subsection (b)(1) is valid only for the transaction indicated on the permit. A permit issued or renewed under Subsection (b)(2) is valid for one year after the date of issuance or renewal.

(d) A permit holder must report in writing or by telephone to the director a change in the holder's business name, address, area code, and telephone number not later than the seventh day after the date of the change.

(e) The Department of Public Safety shall file with the secretary of state a certified copy of a rule adopted under this section.

Sec. 481.079. OFFENSE: UNLAWFUL TRANSFER OR RECEIPT OF CHEMICAL PRECURSOR. (a) A person who sells, transfers, furnishes, or receives a precursor substance subject to Section 481.077(a) commits an offense if the person:

(1) is required by Section 481.078 to have a precursor transfer permit and does not have a precursor transfer permit at the time of the transaction;

(2) does not comply with Section 481.077; or

(3) knowingly makes a false statement in a report or record required by Section 481.077 or 481.078.

(b) A person who sells, transfers, or otherwise furnishes a precursor substance subject to Section 481.077(a) commits an offense if the person sells, transfers, or furnishes the substance with the knowledge or intent that the recipient will use the substance to unlawfully manufacture a controlled substance or controlled substance analogue.

(c) An offense under Subsection (a) is a Class A misdemeanor, unless it is shown on the trial of a defendant that the defendant was convicted previously under this section, in which event the offense is a felony of the third degree.

(d) An offense under Subsection (b) is a felony of the third degree.

Sec. 481.080. CHEMICAL LABORATORY APPARATUS RECORD-KEEPING REQUIREMENTS AND PENALTIES. (a) In this section, "chemical laboratory apparatus" means any equipment designed, made, or adapted to manufacture a controlled substance, including:

(1) condensers;

(2) distilling apparatus;

(3) vacuum dryers;

(4) three-neck flasks;

(5) distilling flasks;

(6) tableting machines; or

(7) encapsulating machines.

(b) A manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes chemical laboratory apparatus shall make an accurate and legible record of the transaction and maintain the record for at least two years after the date of the transaction.

(c) The director may adopt rules to implement this section.

(d) The director by rule may name additional chemical laboratory apparatus for purposes of Subsection (a) if public health and welfare are jeopardized by evidenced use of a chemical laboratory apparatus in the illicit manufacture of a controlled substance or controlled substance analogue. The director by rule may

delete an apparatus listed in Subsection (a) if the director determines that the apparatus does not jeopardize public health and welfare or is not used in the illicit manufacture of a controlled substance or a controlled substance analogue.

(e) The Department of Public Safety shall file with the secretary of state a certified copy of a rule adopted under this section.

(f) Before selling, transferring, or otherwise furnishing to a person in this state an apparatus subject to Subsection (a), a manufacturer, wholesaler, retailer, or other person shall:

(1) if the recipient does not represent a business, obtain from the recipient:

(A) the recipient's driver's license number or other personal identification certificate number, date of birth, and residential or mailing address, other than a post office box number, from a driver's license or personal identification card issued by the Department of Public Safety that contains a photograph of the recipient;

(B) the year, state, and number of the motor vehicle license of the motor vehicle owned or operated by the recipient;

(C) a complete description of how the apparatus is to be used; and

(D) the recipient's signature; or

(2) if the recipient represents a business, obtain from the recipient:

(A) a letter of authorization from the business that includes the business license or comptroller tax identification number, address, area code, and telephone number and a complete description of how the apparatus is to be used; and

(B) the recipient's signature; and

(3) for any recipient, sign as a witness to the signature and identification of the recipient.

(g) If the recipient does not represent a business, the recipient shall present to the manufacturer, wholesaler, retailer, or other person a permit issued in the name of the recipient by the Department of Public Safety under Section 481.081.

(h) Except as provided by Subsection (j), a manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes to a person in this state an apparatus subject to Subsection (a) shall, at least 21 days before the delivery of the apparatus, submit a report of the transaction on a form obtained from the director that includes the information required by Subsection (f).

(i) The director shall supply to a manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes an apparatus subject to Subsection (a) a form for the submission of:

(1) the report required by Subsection (h);

(2) the name and number of apparatus delivered; and

(3) any other information required by the director.

(j) The director may authorize a manufacturer, wholesaler, retailer, or other person to submit a comprehensive monthly report instead of the report required by Subsection (h) if the director determines that:

(1) there is a pattern of regular supply and purchase of the apparatus between the furnisher and the recipient; or

(2) the recipient has established a record of use of the apparatus solely for a lawful purpose.

(k) A manufacturer, wholesaler, retailer, or other person who receives from a source outside this state an apparatus subject to Subsection (a) or who discovers a loss or theft of an apparatus subject to Subsection (a) shall:

(1) submit a report of the transaction to the director in accordance with department rule; and

(2) include in the report:

(A) any difference between the number of the apparatus actually received and the number of the apparatus shipped according to the shipping statement or invoice; or

(B) the number of the loss or theft.

(l) A report under Subsection (k) must:

(1) be made not later than the third day after the date that the manufacturer, wholesaler, retailer, or other person learns of the discrepancy, loss, or theft; and

(2) if the discrepancy, loss, or theft occurred during a shipment of the apparatus, include the name of the common carrier or person who transported the apparatus and the date that the apparatus was shipped.

(m) A manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any apparatus subject to Subsection (a) shall maintain records and inventories in accordance with rules established by the director and shall allow a peace officer to conduct audits and inspect records of purchases and all other records made in accordance with this section at any reasonable time and may not interfere with the audit or with the full and complete inspection or copying of those records. This subsection does not apply to a recipient who has obtained a chemical laboratory apparatus subject to Subsection (a) and who is a permit holder under Section 481.081.

Sec. 481.081. CHEMICAL LABORATORY APPARATUS TRANSFER PERMIT. (a) A person must obtain a chemical laboratory apparatus transfer permit from the Department of Public Safety to be eligible:

(1) to sell, transfer, or otherwise furnish an apparatus subject to Section 481.080(a) to a person in this state;

(2) to receive an apparatus subject to Section 481.080(a) from a source outside this state; or

(3) to receive an apparatus subject to Section 481.080(a) if the person, in receiving the apparatus, does not represent a business.

(b) The Department of Public Safety by rule shall develop procedures for the issuance and renewal of:

(1) a permit for one sale, transfer, receipt, or otherwise furnishing of a chemical laboratory apparatus; or

(2) a permit for more than one sale, transfer, receipt, or otherwise furnishing of a chemical laboratory apparatus.

(c) A permit issued or renewed under Subsection (b)(1) is valid only for the transaction indicated on the permit. A permit issued or renewed under Subsection (b)(2) is valid for one year after the date of issuance or renewal.

(d) A permit holder must report in writing or by telephone to the director a change in the holder's business name, address, area code, and telephone number not later than the seventh day after the date of the change.

(e) The Department of Public Safety shall file with the secretary of state a certified copy of a rule adopted under this section.

Sec. 481.082. OFFENSE: UNLAWFUL TRANSFER OR RECEIPT OF CHEMICAL LABORATORY APPARATUS. (a) A person who sells, transfers, furnishes, or receives an apparatus subject to Section 481.080(a) commits an offense if the person:

(1) is required by Section 481.081 to have an apparatus transfer permit and does not have an apparatus transfer permit at the time of the transaction;

(2) does not comply with the requirements of Section 481.080; or

(3) knowingly makes a false statement in a report or record required by Section 481.080 or 481.081.

(b) A person who sells, transfers, or otherwise furnishes an apparatus subject to Section 481.080(a) commits an offense if the person sells, transfers, or furnishes the apparatus with the knowledge or intent that the recipient will use the apparatus to unlawfully manufacture a controlled substance or controlled substance analogue.

(c) An offense under Subsection (a) is a Class A misdemeanor, unless it is shown on the trial of a defendant that the defendant was convicted previously under this section, in which event the offense is a felony of the third degree.

(d) An offense under Subsection (b) is a felony of the third degree.

(m) The heading to Subchapter C, Chapter 481, Health and Safety Code, is amended to conform to Section 20, **S.B. No. 29**, Acts of the 71st Legislature, Regular Session, 1989, and to read as follows:

SUBCHAPTER C. REGULATION OF MANUFACTURE, DISTRIBUTION, AND DISPENSATION OF CONTROLLED SUBSTANCES, [~~AND~~] CHEMICAL PRECURSORS, AND CHEMICAL LABORATORY APPARATUS

(n) Sections 481.101-481.104, Health and Safety Code, are amended to conform to Section 21, **S.B. No. 29**, Acts of the 71st Legislature, Regular Session, 1989, and to read as follows:

Sec. 481.101. CRIMINAL CLASSIFICATION. For the purpose of establishing criminal penalties for violations of this chapter, controlled substances, including a material, compound, mixture, or preparation containing the controlled substance, are divided into Penalty Groups 1 through 4.

Sec. 481.102. PENALTY GROUP 1. Penalty Group 1 consists of:

(1) the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

Alfentanil;
Allylprodine;
Benzethidine;
Betaprodine;
Clonitazene;
Diampromide;
Diethylthiambutene;
Difenoxin;
Dimenoxadol;
Dimethylthiambutene;
Dioxaphetyl butyrate;
Dipipanone;
Ethylmethylthiambutene;
Etonitazene;
Etoxeridine;
Furethidine;
Hydroxypethidine;
Ketobemidone;
Levophenacylmorphan;
Meprodine;
Methadol;
Moramide;
Morpheridine;
Noracymethadol;
Norlevorphanol;
Normethadone;

Norpipanone;
Phenadoxone;
Phenampromide;
Phenomorphan;
Phenoperidine;
Piritramide;
Proheptazine;
Properidine;
Propiram;
Sufentanil;
Tilidine; and
Trimeperidine;

(2) the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

Acetorphine;
Acetyldihydrocodeine;
Benzylmorphine;
Codeine methylbromide;
Codeine-N-Oxide;
Cyprenorphine;
Desomorphine;
Dihydromorphine;
Drotebanol;
Etorphine, except hydrochloride salt;
Heroin;
Hydromorphinol;
Methyldesorphine;
Methyldihydromorphine;
Monoacetylmorphine;
Morphine methylbromide;
Morphine methylsulfonate;
Morphine-N-Oxide;
Myrophine;
Nicocodeine;
Nicomorphine;
Normorphine;
Pholcodine; and
Thebacon;

(3) the following substances, however produced, except those narcotic drugs listed in another group:

(A) Opium and opiate, and a salt, compound, derivative, or preparation of opium or opiate, other than nalmefene, naloxone and its salts, and naltrexone and its salts, but including:

Codeine;
Ethylmorphine;
Granulated opium;
Hydrocodone;
Hydromorphone;
Metopon;
Morphine;
Opium extracts;
Opium fluid extracts;

Oxycodone;
Oxymorphone;
Powdered opium;
Raw opium;
Thebaine; and
Tincture of opium;

(B) a salt, compound, isomer, derivative, or preparation of a substance that is chemically equivalent or identical to a substance described by Paragraph (A), other than the isoquinoline alkaloids of opium;

(C) Opium poppy and poppy straw;

(D) Cocaine, including:

(i) its salts, its optical, position, and geometric isomers, and the salts of those isomers;

(ii) coca leaves and a salt, compound, derivative, or preparation of coca leaves;

(iii) a salt, compound, derivative, or preparation of a salt, compound, or derivative that is chemically equivalent or identical to a substance described by Subparagraph (i) or (ii), other than decocainized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine; [~~and~~]

(E) concentrate [~~Concentrate~~] of poppy straw, meaning the crude extract of poppy straw in liquid, solid, or powder form that contains the phenanthrine alkaloids of the opium poppy; and

(F) temporary listing of substances subject to emergency scheduling by the Federal Drug Enforcement Administration and any material, compound, mixture, or preparation that contains any quantity of the following substances: N,N-dimethylamphetamine (some trade or other names: N,N,alpha-trimethylbenzeneethaneamine; N,N,alpha-trimethylphenethyamine), its salts, optical isomers, and salts of optical isomers;

(4) the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

Acetyl-alpha-methylfentanyl(N-[1-1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);

Alpha-methylthiofentanyl(N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);

Alphaprodine;

Anileridine;

Beta-hydroxyfentanyl(N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide);

Beta-hydroxy-3-methylfentanyl;

Bezitramide;

Carfentanil;

Dihydrocodeine;

Diphenoxylate;

Fentanyl or alpha-methylfentanyl, or any other derivative of Fentanyl;

Isomethadone;

Levomethorphan;

Levorphanol;

Metazocine;

Methadone;

Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;

3-methylfentanyl(N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide);
3-methylthiofentanyl(N-[3-methyl-1-(2-thienyl)ethyl-4-piperidyl]-N-phenylpropanamide);
Moramide-Intermediate,
2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
Para-fluorofentanyl(N-(4-fluorophenyl)-N-[1-(2-phenylethyl)-4-piperidinyl]propanamide);
PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);
Pethidine;
Pethidine-Intermediate-A,
4-cyano-1-methyl-4-phenylpiperidine;
Pethidine-Intermediate-B,
ethyl-4-phenylpiperidine-4 carboxylate;
Pethidine-Intermediate-C,
1-methyl-4-phenylpiperidine-4-carboxylic acid;
Phenazocine;
Piminodine;
Racemethorphan; [~~and~~]
Racemorphan;
Thiofentanyl(N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide);

(5) Lysergic acid diethylamide, including its salts, isomers, and salts of isomers;

(6) Methamphetamine, including its salts, optical isomers, and salts of optical isomers;

(7) Phenylacetone and methylamine, if possessed together with intent to manufacture methamphetamine; and

(8) Phencyclidine, including its salts.

Sec. 481.103. PENALTY GROUP 2. (a) Penalty Group 2 consists of:

(1) any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

4-bromo-2, 5-dimethoxyamphetamine (some trade or other names: 4-bromo-2, 5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2, 5-DMA);

Bufotenine (some trade and other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5- indolol; N,N-dimethylserotonin; 5-hydroxy-N, N-dimethyltryptamine; mappine);

Diethyltryptamine (some trade and other names: N, N-Diethyltryptamine, DET);

2, 5-dimethoxyamphetamine (some trade or other names: 2, 5-dimethoxy-alpha-methylphenethylamine; 2, 5-DMA);

Dimethyltryptamine (some trade and other names: DMT);

Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product (some trade or other other names for Dronabinol: (a6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo[b,d]pyran-1-01, or (-)-delta-9-(trans)-tetrahydrocannabinol);

Ethylamine Analog of Phencyclidine (some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE);

Ibogaine (some trade or other names: 7-Ethyl-6, 6, beta 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5H-pyrido [1', 2':1, 2] azepino [5, 4-b] indole; tabernanthe iboga.);

Mescaline;

5-methoxy-3, 4-methylenedioxy amphetamine;

4-methoxyamphetamine (some trade or other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA);

1-methyl-4-phenyl-1,2,5,6-tetrahydro-pyridine (MPTP);

1-methyl-4-phenyl-4-propionoxy-piperidine (MPPP, PPMP);

4-methyl-2, 5-dimethoxyamphetamine (some trade and other names: 4-methyl-2, 5-dimethoxy-alpha-methylphenethylamine; "DOM"; "STP");

3,4-methylene-dioxy methamphetamine (MDMA, MDM);

3,4-methylenedioxy amphetamine;

3,4-methylenedioxy N-ethylamphetamine (Also known as N-ethyl MDA);

N-ethyl-3-piperidyl benzilate;

N-hydroxy-3,4-methylenedioxyamphetamine (Also known as N-hydroxy MDA);

4-methylaminorex;

N-methyl-3-piperidyl benzilate;

Parahexyl (some trade or other names: 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo [b, d] pyran; Synhexyl);

1-Phenylcyclohexylamine;

1-Piperidinocyclohexane-Carbonitrile (PCC);

Psilocin;

Psilocybin;

Pyrrolidine Analog of Phencyclidine (some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP);

Tetrahydrocannabinols, other than marihuana, and synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, and synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as:

delta-1 cis or trans tetrahydrocannabinol, and their optical isomers;

delta-6 cis or trans tetrahydrocannabinol, and their optical isomers;

delta-3, 4 cis or trans tetrahydrocannabinol, and its optical isomers;

compounds of these structures, regardless of numerical designation of atomic positions, since nomenclature of these substances is not internationally standardized;

Thiophene Analog of Phencyclidine (some trade or other names: 1-[1-(2-thienyl) cyclohexyl] piperidine; 2-Thienyl Analog of Phencyclidine; TPCP, TCP); and

3,4,5-trimethoxy amphetamine;

(2) Phenylacetone (some trade or other names: Phenyl-2-propanone; P-2-P, Benzymethyl ketone, methyl benzyl ketone); and

(3) unless specifically excepted or unless listed in another Penalty Group, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant or stimulant effect on the central nervous system:

Amphetamine, its salts, optical isomers, and salts of optical isomers;

Etorphine Hydrochloride;

Fenethylline and its salts;

Mecloqualone and its salts;

Methaqualone and its salts; and

N-Ethylamphetamine, its salts, optical isomers, and salts of optical isomers.

(b) For the purposes of Subsection (a)(1) only, the term "isomer" includes an optical, position, or geometric isomer.

Sec. 481.104. PENALTY GROUP 3. (a) Penalty Group 3 consists of:

(1) a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

Methylphenidate and its salts; and

Phenmetrazine and its salts;

(2) a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

a substance that contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid not otherwise covered by this subsection;

a compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any salt of any of these, and one or more active medicinal ingredients that are not listed in any schedule;

a suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any salt of any of these drugs, and approved by the United States Food and Drug Administration for marketing only as a suppository;

Alprazolam;
Amobarbital;
Bromazepam;
Camazepam;
Chlordiazepoxide;
Chlorhexadol;
Clobazam;
Clonazepam;
Clorazepate;
Clotiazepam;
Cloxazolam;
Delorazepam;
Diazepam;
Estazolam;
Ethyl loflazepate;
Fludiazepam;
Flunitrazepam;
Flurazepam;
Glutethimide;
Halazepam;
Haloxzolam;
Ketazolam;
Loprazolam;
Lorazepam;
Lormetazepam;
Lysergic acid, including its salts, isomers, and salts of isomers;
Lysergic acid amide, including its salts, isomers, and salts of isomers;
Mebutamate;
Medazepam;
Midazolam;
Methyprylon;
Nimetazepam;
Nitrazepam;
Nordiazepam;
Oxazepam;

Oxazolam;
Pentazocine, its salts, derivatives, or compounds or mixtures thereof;
Pentobarbitol;
Pinazepam;
Prazepam;
Quazepam;
Secobarbitol;
Sulfondiethylmethane;
Sulfonethylmethane;
Sulfonmethane;
Temazepam;
Tetrazepam; and
Triazolam;

(3) Nalorphine;

(4) a material, compound, mixture, or preparation containing limited quantities of the following narcotic drugs, or any of their salts:

not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) a material, compound, mixture, or preparation that contains any quantity of the following substances:

Barbital;
Chloral betaine;
Chloral hydrate;
Ethchlorvynol;
Ethinamate;
Methohexital;
Meprobamate;
Methylphenobarbital (Mephobarbital);
Paraldehyde;
Petrichloral; and

Phenobarbital;

(6) Peyote, unless unharvested and growing in its natural state, meaning all parts of the plant classified botanically as Lophophora, whether growing or not, the seeds of the plant, an extract from a part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or extracts;

(7) unless listed in another penalty group, a material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, optical, position, or geometric isomers, and salts of the substance's isomers, if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

Benzphetamine;
Cathine [(§)-norpseudoephedrine];
Chlorphentermine;
Clortermine;
Diethylpropion;
Femcamfamin;
Fenfluramine;
Femproporex;
Mazindol;
Mefenorex;
Pemoline (including organometallic complexes and their chelates);
Phendimetrazine;
Phentermine;
Pipradrol; and
SPA [(-)-1-dimethylamino-1,2-diphenylethane]; and

(8) unless specifically excepted or unless listed in another penalty group, a material, compound, mixture, or preparation that contains any quantity of the following substance, including its salts:

Dextropropoxyphene (Alpha-(§/-)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane).

(b) Penalty Group 3 does not include a compound, mixture, or preparation containing a stimulant substance listed in Subsection (a)(1) if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant effect on the central nervous system and if the admixtures are included in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances that have a stimulant effect on the central nervous system.

(c) Penalty Group 3 does not include a compound, mixture, or preparation containing a depressant substance listed in Subsection (a)(2) or (a)(5) if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system and if the admixtures are included in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances that have a depressant effect on the central nervous system.

(o) Section 481.105, Health and Safety Code, is amended to conform to Section 21, **S.B No. 29**, Acts of the 71st Legislature, Regular Session, 1989, and to read as follows:

Sec. 481.105. PENALTY GROUP 4. Penalty Group 4 consists of:

(1) a compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs that includes one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer on the

compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

not more than 15 milligrams of opium per 29.5729 milliliters or per 28.35 grams; and

not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit; [~~and~~]

(2) unless specifically excepted or unless listed in another penalty group, a material, compound, mixture, or preparation containing the narcotic drug Buprenorphine or its salts; and

(3) unless specifically exempted or excluded or unless listed in another penalty group, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

Propylhexedrine;

Pyrovalerone.

(p) Section 481.129(d), Health and Safety Code, is amended to conform to Section 22, **S.B No. 29**, Acts of the 71st Legislature, Regular Session, 1989, and to read as follows:

(d) An offense under Subsection (a) is:

(1) a felony of the second degree if the controlled substance that is the subject of the offense is listed in Schedule I or II;

(2) a felony of the third degree if the controlled substance that is the subject of the offense is listed in Schedule III or IV; and

(3) a Class A [**B**] misdemeanor if the controlled substance that is the subject of the offense is listed in Schedule [~~IV or~~] V.

(q) Section 481.157(e), Health and Safety Code, is amended to conform to Section 23, **S.B No. 29**, Acts of the 71st Legislature, Regular Session, 1989, and to read as follows:

(e) On the petition of the seizing officer, filed in the name of the state with a [~~the clerk of the~~] district court, county court, or justice court in [~~of~~] the county in which the seizure of a controlled substance, [~~or~~] raw material, or drug paraphernalia is made, the [~~district~~] court having jurisdiction may order the controlled substance, [~~or~~] raw material, or drug paraphernalia summarily forfeited, unless the lawful possession and title of the substance or material can be ascertained. If the court determines that a person had lawful possession and title of the controlled substance, [~~or~~] raw material, or drug paraphernalia before it was seized, the court shall order the controlled substance, [~~or~~] raw material, or drug paraphernalia returned to the person, if the person so desires.

(r) Section 481.160, Health and Safety Code, is amended to conform to Section 24, **S.B No. 29**, Acts of the 71st Legislature, Regular Session, 1989, and to read as follows:

Sec. 481.160. DESTRUCTION OF EXCESS QUANTITIES. (a) If a controlled substance [~~or raw material~~] is forfeited under Section 481.157(e), the agency to which the substance [~~or material~~] is forfeited may destroy the substance [~~or material~~] if the agency ensures that:

(1) at least five random and representative samples are taken from the total amount of controlled substance or mixture containing the controlled

substance, and a sufficient quantity is preserved to provide for discovery by parties entitled to discovery;

(2) photographs are taken that reasonably demonstrate the total amount of the controlled substance [~~or raw material~~]; and

(3) the gross weight or liquid measure of the controlled substance [~~or raw material~~] is determined, either by actually weighing or measuring the substance or by estimating its weight or measurement after making dimensional measurements of the total amount seized.

(b) A representative sample, photograph, or record made under this section is admissible in civil or criminal proceedings in the same manner and to the same extent as if the total quantity of the suspected controlled substance [~~or raw material~~] was offered in evidence, regardless of whether the remainder of the substance has been destroyed. An inference or presumption of spoliation does not apply to a substance [~~or material~~] destroyed under this section.

(c) All hazardous waste, raw materials, residuals, contaminated glassware, associated equipment, and by-products from illicit chemical laboratories or similar operations that create health or environmental hazards or prohibit safe storage may be immediately destroyed by a law enforcement agency without court order if current environmental protection standards are followed.

(d) A law enforcement agency seizing materials described in Subsection (c) shall ensure that photographs are taken that reasonably demonstrate the total amount of the materials seized and the manner in which the materials were physically arranged or positioned before seizure and disposal.

(s) Section 2(a), Chapter 425, Acts of the 56th Legislature, Regular Session, 1959 (Article 4476-14, Vernon's Texas Civil Statutes), and Sections 1.02(7), (15), and (39), 2.03, 2.07, 3.011, 3.04(a) and (g), 3.07, 3.08(l) and (n), 3.09(c), 3.11, 3.111, 3.112, 3.12, 3.121, 3.122, 4.02, 4.09(b), 5.07(e), and 5.081, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes), as added or amended by Sections 1-24, **S.B No. 29**, Acts of the 71st Legislature, Regular Session, 1989, are repealed.

(t) If **S.B No. 29**, Acts of the 71st Legislature, Regular Session, 1989, does not become law, this section has no effect.

SECTION 5.03. (a) Section 481.035, Health and Safety Code, is amended to conform to Section 4, **H.B No. 1507**, Acts of the 71st Legislature, Regular Session, 1989, and to read as follows:

Sec. 481.035. SCHEDULE IV. Schedule IV consists of:

(1) except as provided by Section 481.037, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

Alprazolam;
Barbital;
Chloral betaine;
Chloral hydrate;
Chlordiazepoxide;
Clonazepam;
Clorazepate;
Diazepam;
Ethchlorvynol;
Ethinamate;
Flurazepam;
Halazepam;
Lorazepam;

Mebutamate;
Meprobamate;
Methohexital;
Methylphenobarbital;
Oxazepam;
Paraldehyde;
Pentazocine, its salts, derivatives, compounds, or mixtures;
Petrichloral;
Phenobarbital;
Prazepam;
Temazepam; and
Triazolam;

(2) unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, optical, position, or geometric isomers, and salts of those isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific designation:

Diethylpropion;
Fenfluramine;
Mazindol;
Pemoline (including organometallic complexes and their chelates);
Phentermine;
Pipradol; and
SPA [(-)-1-dimethyamino-1, 2-diphenylethane];

(3) unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances, including the substance's salts:

Dextropropoxyphene (Alpha-(§)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane); [~~and~~]

(4) unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation containing limited quantities of the following narcotic drug or its salts:

not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit; and

(5) any human growth hormone or any of the following anabolic steroids, or any isomer, ester, salt, or derivative of the following that acts in the same manner on the human body:

Clostebol;
Dehydrochlormethyltestosterone;
Ethylestrenol;
Fluoxymesterone;
Mesterolone;
Methandienone;
Methandrostenolone;
Methenolone;
Methyltestosterone;
Nandrolone;
Norethandrolone;
Oxandrolone;
Oxymesterone;
Oxymetholone;
Stanozolol; and
Testosterone.

(b) Section 481.071, Health and Safety Code, is amended to conform to Section 5, **H.B No. 1507**, Acts of the 71st Legislature, Regular Session, 1989, and to read as follows:

Sec. 481.071. MEDICAL PURPOSE REQUIRED BEFORE PRESCRIBING, DISPENSING, DELIVERING, OR ADMINISTERING CONTROLLED SUBSTANCE. (a) A practitioner defined by Section 481.002(39)(A) may not prescribe, dispense, deliver, or administer a controlled substance or cause a controlled substance to be administered under the practitioner's direction and supervision except for a valid medical purpose and in the course of medical practice.

(b) An anabolic steroid or human growth hormone listed in Section 481.035 may only be:

(1) dispensed, prescribed, delivered, or administered by a practitioner, as defined by Section 481.002(39)(A), for a valid medical purpose and in the course of professional practice; or

(2) dispensed or delivered by a pharmacist according to a prescription issued by a practitioner, as defined by Section 481.002(35)(A) or (C), for a valid medical purpose and in the course of professional practice.

(c) For the purposes of Subsection (b), bodybuilding, muscle enhancement, or increasing muscle bulk or strength through the use of an anabolic steroid or human growth hormone listed in Section 481.035 by a person who is in good health is not a valid medical purpose.

(c) Section 481.105, Health and Safety Code, is amended to conform to Section 6, **H.B No. 1507**, Acts of the 71st Legislature, Regular Session, 1989, and to read as follows:

Sec. 481.105. PENALTY GROUP 4. Penalty Group 4 consists of:

(1) a compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs that includes one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer on the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

not more than 15 milligrams of opium per 29.5729 milliliters or per 28.35 grams; and

not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit; [~~and~~]

(2) unless specifically excepted or unless listed in another penalty group, a material, compound, mixture, or preparation containing the narcotic drug Buprenorphine or its salts; and

(3) any human growth hormone or any of the following anabolic steroids, or any isomer, ester, salt, or derivative of the following that acts in the same manner on the human body:

Clostebol;

Dehydrochlormethyltestosterone;

Ethylestrenol;

Fluoxymesterone;

Mesterolone;
Methandienone;
Methandrostenolone;
Methenolone;
Methyltestosterone;
Nandrolone;
Norethandrolone;
Oxandrolone;
Oxymesterone;
Oxymetholone;
Stanozolol; and
Testosterone.

(d) Section 481.111, Health and Safety Code, is amended by adding Subsection (d) to conform to Section 7, **H.B No. 1507**, Acts of the 71st Legislature, Regular Session, 1989, and to read as follows:

(d) The provisions of this chapter relating to the possession and distribution of anabolic steroids do not apply to the use of anabolic steroids that are administered to livestock or poultry.

(e) Section 483.001(3), Health and Safety Code, is amended to conform to Section 1, **H.B No. 1507**, Acts of the 71st Legislature, Regular Session, 1989, and to read as follows:

(3) "Dangerous drug" means a device or a drug that is unsafe for self-medication and that is not included in Penalty Groups 1 through 4 of Chapter 481 (Texas Controlled Substances Act). The term includes a device or a drug[~~; including an anabolic steroid or human growth hormone;~~] that bears or is required to bear the legend:

(A) Caution: federal law prohibits dispensing without prescription; or

(B) Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian.

(f) Sections 483.041(a) and (b), Health and Safety Code, are amended to conform to Section 10(b), **H.B No. 1507**, Acts of the 71st Legislature, Regular Session, 1989, and to read as follows:

(a) A person commits an offense if the person possesses a dangerous drug[~~, other than an anabolic steroid or human growth hormone;~~] unless the person obtains the drug from a pharmacist acting in the manner described by Section 483.042(a)(1) or a practitioner acting in the manner described by Section 483.042(a)(2).

(b) Except as permitted by this chapter, a person commits an offense if the person possesses a dangerous drug[~~, other than an anabolic steroid or human growth hormone;~~] for the purpose of selling the drug.

(g) Section 483.042(a), Health and Safety Code, is amended to conform to Sections 3 and 10(b), **H.B No. 1507**, Acts of the 71st Legislature, Regular Session, 1989, and to read as follows:

(a) A person commits an offense if the person delivers or offers to deliver a dangerous drug[~~, other than an anabolic steroid or human growth hormone~~]:

(1) unless:

(A) the dangerous drug is delivered or offered for delivery by a pharmacist under:

(i) a prescription issued by a practitioner described by Section 483.001(12)(A) or (B); or

(ii) an original written prescription issued by a practitioner described by Section 483.001(12)(C); and

(B) a label is attached to the immediate container in which the drug is delivered or offered to be delivered and the label contains the following information:

(i) the name and address of the pharmacy from which the drug is delivered or offered for delivery;

(ii) the date the prescription for the drug is dispensed;

(iii) the number of the prescription as filed in the prescription files of the pharmacy from which the prescription is dispensed;

(iv) the name of the practitioner who prescribed the drug;

(v) the name of the patient and, if the drug is prescribed for an animal, a statement of the species of the animal; and

(vi) directions for the use of the drug as contained in the prescription; or

(2) unless:

(A) the dangerous drug is delivered or offered for delivery by a practitioner in the course of practice; and

(B) a label is attached to the immediate container in which the drug is delivered or offered to be delivered and the label contains the following information:

(i) the name and address of the practitioner;

(ii) the date the drug is delivered;

(iii) the name of the patient and, if the drug is prescribed for an animal, a statement of the species of the animal; and

(iv) the name of the drug, the strength of the drug, and directions for the use of the drug.

(h) Sections 483.001(1), 483.026, and 483.044, Health and Safety Code, are repealed to conform to Section 10, **H.B No. 1507**, Acts of the 71st Legislature, Regular Session, 1989.

(i) Sections 2(a), 4, and 15(b), Chapter 425, Acts of the 56th Legislature, Regular Session, 1959 (Article 4476-14, Vernon's Texas Civil Statutes), and Sections 2.06, 3.08(n) and (o), 4.02(e), and 4.11(d), Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes), as added or amended by Sections 1-7, **H.B No. 1507**, Acts of the 71st Legislature, Regular Session, 1989, are repealed.

(j) If **H.B No. 1507**, Acts of the 71st Legislature, Regular Session, 1989, does not become law, this section has no effect.

SECTION 5.04. (a) Section 481.105, Health and Safety Code, is amended to conform to Section 6, **H.B No. 1507**, and Section 21, **S.B No. 29**, Acts of the 71st Legislature, Regular Session, 1989, and to read as follows:

Sec. 481.105. PENALTY GROUP 4. Penalty Group 4 consists of:

(1) a compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs that includes one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer on the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

not more than 15 milligrams of opium per 29.5729 milliliters or per 28.35 grams; and

not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit; [~~and~~]

(2) unless specifically excepted or unless listed in another penalty group, a material, compound, mixture, or preparation containing the narcotic drug Buprenorphine or its salts;

(3) any human growth hormone or any of the following anabolic steroids, or any isomer, ester, salt, or derivative of the following that acts in the same manner on the human body:

Clostebol;
Dehydrochlormethyltestosterone;
Ethylestrenol;
Fluoxymesterone;
Mesterolone;
Methandienone;
Methandrostenolone;
Methenolone;
Methyltestosterone;
Nandrolone;
Norethandrolone;
Oxandrolone;
Oxymesterone;
Oxymetholone;
Stanozolol; and
Testosterone; and

(4) unless specifically exempted or excluded or unless listed in another penalty group, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

Propylhexedrine; and
Pyrovalerone.

(b) Section 483.001(3), Health and Safety Code, is amended to conform to Section 1, **S.B No. 29**, and Section 1, **H.B No. 1507**, Acts of the 71st Legislature, Regular Session, 1989, and to read as follows:

(3) "Dangerous drug" means a device or a drug that is unsafe for self-medication and that is not included in Schedules I through V or Penalty Groups 1 through 4 of Chapter 481 (Texas Controlled Substances Act). The term includes a device or a drug[~~, including an anabolic steroid or human growth hormone,~~] that bears or is required to bear the legend:

(A) Caution: federal law prohibits dispensing without prescription; or

(B) Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian.

(c) This section takes effect only if both **H.B No. 1507** and **S.B No. 29**, Acts of the 71st Legislature, Regular Session, 1989, are enacted and become law. If both of those bills become law, Sections 5.02(a) and (o) and 5.03(c) and (e) of this Act do not take effect.

SECTION 5.05. (a) Section 301.031(1), Health and Safety Code, is amended to conform to **S.B No. 515**, Acts of the 71st Legislature, Regular Session, 1989, and to read as follows:

(1) "Eligible institution" means an entity engaged in health-related pursuits that, except for cooperative associations, is exempt from federal income tax and includes only:

(A) a municipality;

(B) a political subdivision of the state;

(C) a health-related institution supported by the state or federal government or by a federal department, division, or agency, including:

(i) The Texas A&M University System;

(ii) The University of Texas System;

(iii) Texas Woman's University; and

(iv) the Children's Nutrition Research Center;

(D) a nonprofit health-related institution; and

(E) a cooperative association created to provide a system, a unit of which is located in a county with a population of more than 980,000, or in a county contiguous to a county with a population of more than 980,000 [~~2,400,000~~].

(b) Section 2(1), Chapter 195, Acts of the 64th Legislature, Regular Session, 1975 (Article 4447r, Vernon's Texas Civil Statutes), as amended by **S.B No. 515**, Acts of the 71st Legislature, Regular Session, 1989, is repealed.

SECTION 5.06. (a) Sections 435.021 and 435.023, Health and Safety Code, are repealed to conform to the repeal of Article 4474, Revised Statutes, by **S.B No. 1524**, Acts of the 71st Legislature, Regular Session, 1989.

(b) Section 435.022, Health and Safety Code, is redesignated as Section 435.021, Health and Safety Code.

SECTION 5.07. (a) Sections 121.033 and 121.045, Health and Safety Code, are amended to conform to **S.B No. 204**, Acts of the 71st Legislature, Regular Session, 1989, and to read as follows:

Sec. 121.033. DEPARTMENT DIRECTOR. (a) The governing body of a municipality or the commissioners court of a county shall appoint [~~a physician as~~] the director of the municipality's or county's local health department.

(b) The director is the chief administrative officer of the local health department, and if the director is a physician, the director is the health authority in the local health department's jurisdiction.

(c) The governing body of a municipality or the commissioners court of a county may designate a person to perform its appointment duties under this section.

(d) A [~~person serving as the~~] director of a local health department [~~on September 1, 1983,~~] who is not a physician [~~may continue to serve as department director, in which case the governing body of the municipality or commissioners court of the county~~] shall appoint a physician as the health authority in the local health department's jurisdiction, subject to the approval of the governing body or the commissioners court, as appropriate, and the board.

(e) The governing body or the commissioners court, as appropriate, shall set the compensation of the director and the health authority in its jurisdiction, except that the compensation, including a salary, may be allowed only for services actually rendered.

Sec. 121.045. DISTRICT DIRECTOR. (a) The members of a public health district shall appoint [~~a physician as~~] the director of the district.

(b) The director is the chief administrative officer of the public health district, and if the director is a physician, the director is the health authority in the district's jurisdiction.

(c) A member may designate a person to perform its appointment duties under this section.

(d) A [~~person serving as the~~] director of a public health district [~~on September 1, 1983,~~] who is not a physician [~~may continue to serve as district director, in which case the district members~~] shall appoint a physician as the health authority for the district, subject to the approval of the members and the board.

(b) Sections 4.04(b) and 4.07(c), Local Public Health Reorganization Act (Article 4436(b), Revised Statutes), as amended by **S.B No. 204**, Acts of the 71st Legislature, Regular Session, 1989, are repealed.

SECTION 5.08. (a) Section 162.001(1), Health and Safety Code, is amended to conform to Section 1, **H.B No. 143**, Acts of the 71st Legislature, Regular Session, 1989, and to read as follows:

(1) "Blood bank" means a facility that obtains blood from voluntary donors, as that term is defined by the United States Food and Drug Administration, [and] the American Association of Blood Banks, and the American Red Cross Blood Services, and that is registered or licensed by the Office of Biologics of the United States Food and Drug Administration and accredited by the American Association of Blood Banks or the American Red Cross Blood Services, or is qualified for membership in the American Association of Tissue Banks. The term includes a blood center, regional collection center, tissue bank, and transfusion service.

(b) Section 162.008, Health and Safety Code, is amended to conform to Section 2, **H.B No. 143**, Acts of the 71st Legislature, Regular Session, 1989, and to read as follows:

Sec. 162.008. PROCEDURES FOR NOTIFYING BLOOD RECIPIENTS. Each hospital, physician, health agency, and other transfuser of blood shall strictly follow the official "Operation Look-Back" procedure of the American Association of Blood Banks or the American Red Cross Blood Services in notifying past and future recipients of blood. The only exception to notifying a recipient of blood is if the recipient is dead or cannot be located.

(c) Sections 1(1) and 3(g), Chapter 1093, Acts of the 70th Legislature, Regular Session, 1987 (Article 4419b-1.5, Vernon's Texas Civil Statutes), as amended by **H.B No. 143**, Acts of the 71st Legislature, Regular Session, 1989, are repealed.

SECTION 5.09. (a) Section 61.006, Health and Safety Code, is amended by adding Subsection (e) to conform to **H.B No. 1243**, Acts of the 71st Legislature, Regular Session, 1989, and to read as follows:

(e) Notwithstanding Subsection (a) or any other provision of law, the department shall permit payment to a licensed dentist for services provided under Sections 61.028(a)(3) and (a)(5) to the extent that these services are required by Section 61.028(a)(5) if the dentist can provide those services within the scope of the dentist's license.

(b) Section 1.06(i), Indigent Health Care and Treatment Act (Article 4438f, Vernon's Texas Civil Statutes), as added by Section 1, **H.B No. 1243**, Acts of the 71st Legislature, Regular Session, 1989, is repealed.

(c) If **H.B No. 1243**, Acts of the 71st Legislature, Regular Session, 1989, does not become law, this section has no effect.

SECTION 5.10. (a) Section 61.023, Health and Safety Code, is amended by adding Subsection (d) to conform to Section 1, **H.B No. 630**, Acts of the 71st Legislature, Regular Session, 1989, and to read as follows:

(d) Not later than the beginning of a state fiscal year, the county shall adopt the eligibility standards it will use during that fiscal year and shall make a reasonable effort to notify the public of the standards. The county may change the eligibility standards to make them more or less restrictive than the preceding standards, but the standards may not be more restrictive than the standards established by the department under Section 61.006.

(b) Section 61.036, Health and Safety Code, is amended by adding Subsection (c) to conform to Section 2, **H.B No. 630**, Acts of the 71st Legislature, Regular Session, 1989, and to read as follows:

(c) Regardless of the application, documentation, and verification procedures or eligibility standards established by the department under Subchapter A, a county

may credit an expenditure for an eligible resident toward eligibility for state assistance if the eligible resident received the health care services at a hospital maintained or operated by a state agency that has a contract with the county to provide health care services.

(c) Subchapter C, Chapter 61, Health and Safety Code, is amended by adding Section 61.065 to conform to Section 3, **H.B No. 630**, Acts of the 71st Legislature, Regular Session, 1989, and to read as follows:

Sec. 61.065. COUNTY RESPONSIBILITY FOR HOSPITAL SOLD ON OR AFTER JANUARY 1, 1988. (a) This section applies to a county that, on or after January 1, 1988, sells to a purchaser that is not a governmental entity a county hospital that was leased at the time of the sale to a person who is not a governmental entity.

(b) On the date the hospital is sold, the hospital ceases being a public hospital for the purposes of this chapter, and the county shall provide health care services to county residents in accordance with Subchapter B.

(c) If the contract for the sale of the hospital provides for the provision by the hospital of health care services to county residents, the value of the health care services credited or paid in a state fiscal year under the contract is included as part of the computation of a county expenditure under Section 61.037 to the extent that the value of the services does not exceed the payment standard established by the department for allowed inpatient and outpatient services.

(d) Sections 2.03(d), 5.01(c), and 14.02, Indigent Health Care and Treatment Act (Article 4438f, Vernon's Texas Civil Statutes), as added by Sections 1-3, **H.B No. 630**, Acts of the 71st Legislature, Regular Session, 1989, are repealed.

SECTION 5.11. (a) Section 461.002, Health and Safety Code, is amended by amending Subdivisions (5) and (6), redesignating Subdivision (10) as Subdivision (11), and adding a new Subdivision (10) to conform to **S.B No. 302**, Acts of the 71st Legislature, Regular Session, 1989, and to read as follows:

(5) "Drug abuse" means misuse or abuse of any controlled substance or volatile chemical for other than appropriate and duly prescribed medicinal purposes.

(6) "Drug-dependent person" means a person who is using a controlled substance or volatile chemical and who is in a state of psychological or physical dependence, or both, arising from administration of a controlled substance or volatile chemical. Drug dependence is characterized by behavioral and other responses that include a strong compulsion to take a controlled substance or volatile chemical in order to experience its psychological effects or to avoid the discomfort of its absence.

(10) "Substance abuse" means alcohol or drug abuse, or both.

(11) [~~(10)~~] "Treatment" means the initiation and maintenance of a person's substance-free status.

(b) Sections 1.03(6), (7), and (12), Texas Alcohol and Drug Abuse Services Act (Article 5561c-2, Vernon's Texas Civil Statutes), as added and amended by Section 1, **S.B No. 302**, Acts of the 71st Legislature, Regular Session, are repealed.

ARTICLE 6. CHANGES RELATING TO HUMAN RESOURCES CODE

SECTION 6.01. (a) The changes to the Human Resources Code take effect September 1, 1989.

(b) If **S.B No. 1104**, Acts of the 71st Legislature, Regular Session, 1989, does not become law, this article has no effect.

SECTION 6.02. (a) Chapter 142, Human Resources Code, is amended by adding Section 142.004 to conform to Section 1, **S.B No. 438**, Acts of the 71st Legislature, Regular Session, 1989, and to read as follows:

Sec. 142.004. JUVENILE PROBATION PERSONNEL. Juvenile probation personnel employed by a political subdivision of the state are state employees for the purposes of Chapter 104, Civil Practice and Remedies Code.

(b) This section applies only to a cause of action that accrues on or after the effective date of **S.B No. 438**, Acts of the 71st Legislature, Regular Session, 1989, or a prosecution in a criminal case for which the information or indictment is filed on or after that date. An action that accrues before the effective date of **S.B No. 438**, Acts of the 71st Legislature, Regular Session, 1989, or a prosecution in a criminal case for which the information or indictment is filed before that date is governed by the law in effect at the time the action accrued or at the time the information or indictment was filed, and that law is continued in effect for that purpose.

(c) Section 75.003, Human Resources Code, as added by **S.B No. 438**, Acts of the 71st Legislature, Regular Session, 1989, is repealed. The repeal of Section 75.003, Human Resources Code, does not affect a cause of action that accrues on or after the effective date of **S.B No. 438**, but before the effective date of this section, or affect a prosecution in a criminal case for which the information or indictment is filed during that period.

(d) If **S.B No. 438**, Acts of the 71st Legislature, Regular Session, 1989, does not become law, this section has no effect.

ARTICLE 7. REPEALER

SECTION 7.01. Section 2.01, Senate Bill No. 221, Acts of the 71st Legislature, Regular Session, 1989, does not take effect and Section 58.031, Agriculture Code, which was contingent on the adoption by the voters of the constitutional amendment proposed by **H.J.R No. 4**, 70th Legislature, Regular Session, 1987, is repealed because that constitutional amendment was not adopted.

ARTICLE 8. EMERGENCY

SECTION 8.01. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator McFarland and by unanimous consent, the Senate concurred in the House amendment to **S.B. 1046** viva voce vote.

SENATE RULE 12.09(a) SUSPENDED

On motion of Senator McFarland and by unanimous consent, Senate Rule 12.09(a) was suspended as it relates to the Conference Committee Report on **H.B. 2335**.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2335 ADOPTED

Senator McFarland called from the President's table the Conference Committee Report on **H.B. 2335**. (The Conference Committee Report having been filed with the Senate and read on Sunday, May 28, 1989.)

On motion of Senator McFarland, the Conference Committee Report was adopted by the following vote: Yeas 28, Nays 0.

Absent-excused: Parker, Parmer, Washington.

SENATE BILL 1322 WITH HOUSE AMENDMENTS

Senator Dickson called **S.B. 1322** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment - McDonald

Amend **S.B. 1322** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Chapter 1, Texas Mental Health Code (Article 5547-1 et seq., Vernon's Texas Civil Statutes), is amended by adding Sections 20A and 20B to read as follows:

Sec. 20A. CIVIL DAMAGES. (a) A person who injures a person with mental illness by intentionally violating a right guaranteed under this code is liable to the injured person for not less than $100 or more than $5,000.

(b) A person who injures a person with mental illness by recklessly violating a right guaranteed under this code is liable to the injured person for not less than $100 or more than $1,000.

(c) A cause of action under this section may be filed by:

(1) the injured person;

(2) the injured person's parent, if the person is a minor;

(3) the injured person's guardian, if the person has been declared incompetent; or

(4) the injured person's "next friend" as prescribed by Rule 44, Texas Rules of Civil Procedure.

(d) The cause of action may be filed in a district court in Travis County or in the county in which the defendant resides.

(e) This section does not affect a person's rights or remedies under other law.

Sec. 20B. PAYMENT AND DEFENSE OF CERTAIN CLAIMS AGAINST DEPARTMENT EMPLOYEE. (a) Except as provided by Subsection (b) of this section, the department shall pay actual damages awarded under this code against a department employee if the damages:

(1) result from an act or omission of the employee in the course and scope of employment for the department; and

(2) arise from a cause of action for negligence on the part of the employee.

(b) The department may not pay damages awarded against an employee that arise from a cause of action involving an act in which the employee was intentionally or recklessly negligent.

(c) The attorney general shall provide legal counsel to represent an employee for whom the department must pay damages under this section. The employee shall cooperate fully with the legal counsel in defending the cause of action.

(d) To be eligible for assistance under this section, the employee must deliver to the department the original or a copy of the summons, complaint, process, notice, demand, or pleading not later than the 10th day after the date on which the employee is served with the summons, complaint, process, notice, demand, or pleading.

(e) This section does not impair, limit, or modify rights and obligations existing under an insurance policy.

(f) This section applies only to a department employee and does not affect the rights of any other person.

SECTION 2. Section 44, Texas Mental Health Code (Article 5547-44, Vernon's Texas Civil Statutes), is amended by adding Subsection (d) to read as follows:

(d) The court shall inform the attorney in writing of the attorney's duties under Section 45 of this code.

SECTION 3. Section 45, Texas Mental Health Code (Article 5547-45, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 45. Duties of Attorney. An attorney representing a person who is the subject of proceedings for court-ordered mental health services under this code shall fulfill at least the following duties:

(a) The attorney shall, within a reasonable time prior to the hearing, interview the person. The attorney shall thoroughly discuss with the person the law and facts of the case, the person's options, and the grounds upon which court-ordered mental health services are being sought. He shall, if court-appointed, further explain to the person that the person may obtain his own counsel at his own expense, rather than accept representation by court-appointed counsel. The attorney may advise the person concerning the wisdom of agreeing to or resisting efforts to provide mental health services. Whether or not to resist such efforts, however, is a decision to be made by the person. If the person expresses a desire to avoid court-ordered mental health services, the attorney has the duty to use all reasonable efforts within the bounds of law to advocate the person's right to avoid court-ordered mental health services, without regard to the attorney's personal view.

(b) After interviewing the person, if the attorney wishes to withdraw from the case, he shall file a motion with the court. Such a motion shall be acted upon as soon as possible. In no event may the attorney withdraw from the case unless authorized to do so by court order.

(c) Prior to the hearing, the attorney shall:

(1) review the application, the certificates of medical examination for mental illness, and relevant medical records of the person;

(2) interview supporting witnesses and other witnesses who will testify at the hearing; and

(3) explore, and if the client desires, advocate for the least restrictive treatment [~~the possibility of~~] alternatives to court-ordered in-patient mental health services.

(d) The attorney shall discuss with the person the procedures for appeal, release, and discharge if the court orders participation in mental health services and other rights the person may have during the period of the court's order.

(e) The attorney shall maintain responsibility for the person's legal representation until the application is dismissed, appeal from an order directing treatment is taken, the time for giving notice of appeal has expired by operation of law, or another attorney assumes responsibility for the matter.

(f) The attorney shall advise the person of the person's right to attend a hearing or to waive the right to attend a hearing.

(g) The attorney shall inform the court at a hearing at which the person is not present of the reasons for the person's absence.

SECTION 4. Subsection (a), Section 46, Texas Mental Health Code (Article 5547-46, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Before a hearing may be held on an Application for Court-Ordered Mental Health Services, there must be filed with the court Certificates of Medical Examination for Mental Illness by two physicians, at least one of whom shall be a psychiatrist if one is available in the county, who have each examined the person within the preceding 30 days. The court may order an independent evaluation by a psychiatrist chosen by the proposed patient if the court determines that the evaluation will assist the finder of fact. That psychiatrist may testify on behalf of the proposed patient. The court may authorize reimbursement to the attorney ad litem for court approved expenses incurred in obtaining expert testimony if the court determines that the proposed patient is indigent. The court may order the proposed patient's county of residence to pay the expenses.

SECTION 5. Subsection (a), Section 52, Texas Mental Health Code (Article 5547-52, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) An order directing that a person participate in out-patient mental health services shall identify an individual to be responsible for those services. This

individual shall be the head of a mental health facility or an individual involved in providing the services in which the patient is to participate under the order. No individual shall be designated as responsible for the services ordered for a particular person without the individual's consent unless that individual is the head of a facility operated by the department or is the head of a community mental health and mental retardation center established pursuant to Section 3.01 of the Texas Mental Health and Mental Retardation Act, as amended (Article 5547-201 to 5547-204, Vernon's Texas Civil Statutes), which provides mental health services in the region in which the committing court is located.

SECTION 6. Subsection (c), Section 58, Texas Mental Health Code (Article 5547-58, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) A court may not commit a patient to an in-patient mental health facility operated by a community center or other entity designated by the department to provide mental health services unless the facility is licensed under Chapter 6 of this code and the court notifies the mental health authority serving the region in which the commitment is made.

SECTION 7. Section 81, Texas Mental Health Code (Article 5547-81, Vernon's Texas Civil Statutes), is amended by adding Subsection (d) to read as follows:

(d) Each patient has the right to be informed, in writing at the time of admission and discharge, of the existence and purpose of the protection and advocacy system established in this state under the federal Protection and Advocacy for Mentally Ill Individuals Act of 1986 (Public Law 99-319). The notice must include the protection and advocacy system's telephone number and address.

SECTION 8. Section 100, Texas Mental Health Code (Article 5547-100, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 100. Applicability of this Code. This code applies to any conduct, transaction, or proceeding within its terms which occurs after the effective date of this code, whether the patient concerned in the conduct, transaction, or proceeding was admitted or committed before or after the effective date of this code. In particular, the discharge under this code of any patient committed to a mental hospital under the prior law terminates any presumption that he is mentally incompetent. [~~However, a proceeding for the commitment of a person to a state mental hospital begun before the effective date of this code is governed by the law existing at the time the proceeding was begun and for this purpose the law shall be treated as still remaining in force. Unless these proceedings are completed within nine months after the effective date of this code they shall be governed by the provisions of this code.~~]

SECTION 9. This Act takes effect September 1, 1989.

SECTION 10. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Amendment on Third Reading - Granoff

Amendment to **C.S.S.B. 1322**

Page One; Strike lines 5 through 24
Page Two; Strike lines 1 through 27
Page Three; Line 1, Section 2 becomes Section 1
Page Three; Line 6, Section 3 becomes Section 2
Page Five; Line 4, Section 4 becomes Section 3
Page Five; Line 21, Section 5 becomes Section 4
Page Six, line 11, Section 6 becomes Section 5

Page Six, line 20, Section 7 becomes Section 6
Page Seven, line 3, Section 8 becomes Section 7
Page Seven, line 20, Section 9 becomes Section 8
Page Seven, line 21, Section 10 becomes Section 9

The amendments were read.

On motion of Senator Dickson and by unanimous consent, the Senate concurred in the House amendments to **S.B. 1322** viva voce vote.

SENATE BILL 801 WITH HOUSE AMENDMENTS

Senator Ratliff called **S.B. 801** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment - Kuempel

Amend **S.B. 801** as follows:

(1) on page 2, line 5, strike "and".

(2) on page 2, line 7, strike the period and add "; and".

(3) on page 2, between lines 7 and 8, add new subsection 3 to read as follows: "(3) the plan or plat prepared by the architect, engineer or surveyor asserting the lien is used in performing such construction."

Committee Amendment - Horn

Amend **S.B. 801** by deleting the period at the end of line 7, page 2 and adding the following:

"before the date construction is commenced."

The amendments were read.

On motion of Senator Ratliff and by unanimous consent, the Senate concurred in the House amendments to **S.B. 801** viva voce vote.

(Senator Brooks in Chair)

CONFERENCE COMMITTEE REPORT
SENATE CONCURRENT RESOLUTION 61

Senator Johnson submitted the following Conference Committee Report:

Austin, Texas
May 28, 1989

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.C.R. 61** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

JOHNSON	GUERRERO
BARRIENTOS	GLOSSBRENNER
TRUAN	ARNOLD
EDWARDS	HEFLIN
BROOKS	S. JOHNSON
On the part of the Senate	On the part of the House

WHEREAS, The policy of the State of Texas is to promote the health, safety, and welfare of its school-age children; and

WHEREAS, That policy can best be achieved by loving parenting with the support of schools, religious leaders, local communities, and the state's educational leadership; and

WHEREAS, The health, safety, and welfare of Texas's school-age children are threatened by unwanted teenage pregnancies, substance abuse, improper nutrition, sexually transmitted diseases, and transmission of the human immunodeficiency virus (HIV); and

WHEREAS, The 71st Legislature recognizes the essential role that education plays in eliciting responsible behavior that promotes personal wellness, safety, and disease prevention; and

WHEREAS, It is the intent of the 71st Legislature that the schoolchildren of the State of Texas be given the opportunity to receive comprehensive health education that focuses on behavior that is conducive to personal wellness, safety, and disease prevention; now, therefore, be it

RESOLVED by the 71st Legislature, That the State Board of Education continue and increase its efforts to promulgate and make available to school districts a comprehensive age-appropriate health education curriculum that focuses on behavior that is conducive to the development of responsibility for personal wellness, safety, and disease prevention; and, be it further

RESOLVED, That each school district must take into consideration that any sex education curriculum be designed to protect the modesty of school-age children by designing the materials for both all female and all male classes; and, be it further

RESOLVED, That the school districts shall allow any student to opt out of any health class if a parent desires it; and, be it further

RESOLVED, That education about personal wellness, safety, and disease prevention shall be construed to include information on the dangers and risks of adolescent sexual activity, unwanted teenage pregnancies, substance abuse, improper nutrition, sexually transmitted diseases, and transmission of HIV; and, be it further

RESOLVED, That such a comprehensive health education curriculum shall include age and developmentally appropriate instruction that is intended to prevent adolescent sexual activity, unwanted teenage pregnancy, substance abuse, sexually transmitted diseases, and transmission of HIV; and, be it further

RESOLVED, That in developing a curriculum dealing with health care issues, the local school districts, State Board of Education, and Central Education Agency shall be urged to utilize recognized local health care professionals or state agency professionals; and, be it further

RESOLVED, That the State Board of Education, in promoting such a curriculum, include the following elements in its renewed efforts in developing course materials or other published information, in evaluating the merits of textbooks, and in advising school districts:

(1) an emphasis on abstinence from sexual intercourse as the expected societal standard for school-age unmarried persons as well as being the most effective means of preventing unwanted teenage pregnancy, sexually transmitted diseases, and transmission of HIV when contracted sexually;

(2) an emphasis on abstinence as the most effective means of preventing the undesirable health effects of substance abuse;

(3) an emphasis on self-control, personal responsibility, self-discipline, and respect for self and others in making decisions pertaining to sexual or substance abusing behaviors, including the importance of avoiding sexual exploitation of other persons;

(4) information on the physical, emotional, legal, and financial consequences of adolescent sexual activity, pregnancy, and substance abuse;

(5) the latest medical information that indicates health consequences and statistical efficacy of contraception;

(6) information based on the latest medical research and supported by well-recognized health sources such as the U. S. Centers for Disease Control and the Surgeon General of the United States regarding the routes of transmission of HIV and medically viable methods of preventing HIV transmission, including the statistical efficacy of those methods of prevention; and

(7) information on how to cope with and rebuff unwanted physical and verbal sexual advances, as well as unwanted peer pressure related to sexual activity and substance abuse; and, be it further

RESOLVED, That the State Board of Education make available to school districts comprehensive health education materials for teacher inservice training; and, be it further

RESOLVED, That the Central Education Agency encourage school districts to report on the status of their health education programs, including the need, if it exists, for additional published materials, inservice training, or professional assistance from the Central Education Agency; and, be it further

RESOLVED, That the Central Education Agency shall be authorized to collect data and reports from the school districts regarding their health education program, information included in the programs, the grade levels in which subject matter is included, the subject in which information and instruction is provided, and the extent of teacher training; and, be it further

RESOLVED, That the Central Education Agency shall make a complete report, including findings and recommendations and drafts of any legislation considered necessary to the 72nd Legislature when it convenes in January, 1991; and, be it further

RESOLVED, That an official copy of this resolution be prepared for the Commissioner of Education who shall forward copies to the members of the State Board of Education.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

SENATE BILL 309 WITH HOUSE AMENDMENTS

Senator Glasgow called **S.B. 309** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment - Uher

Amend **S.B. 309** as follows:

On page 1, line 22, strike "three" and insert "one".

Amendment - P. Hill

Amend **S.B. 309** as follows:

On page one, line 22, after person, add or agency.

The amendments were read.

On motion of Senator Glasgow and by unanimous consent, the Senate concurred in the House amendments to **S.B. 309** viva voce vote.

SENATE BILL 310 WITH HOUSE AMENDMENTS

Senator Glasgow called **S.B. 310** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Local and Consent Calendars
Committee Amendment No. 1 - Hinojosa

Amend **S.B. 310** as follows:

1. On page 5, line 14 through 25 on **S.B. 310**, delete all of SECTION 6.

Local and Consent Calendars
Committee Amendment No. 2 - P. Hill

Amend **S.B. 310** as follows:

1. Amend page 8, line 25 by deleting the word "sole" between "the" and "managing".
2. Amend page 9, line 2 by deleting the word "sole" between "child's" and "managing".
3. Amend page 9, line 9 by deleting the word "specific" between "the" and "terms".
4. Amend page 9, line 14 by deleting the word "specific" between "the" and "terms".
5. Insert new Section 12 to read as follows and renumber current Sections 12 and 13 as 13 and 14:

SECTION 12. (a) To the extent of any conflict with this Act, House Bill 113, Act of the 71st Legislature, Regular Session, 1989, controls over this Act.

(b) To the extent of any conflict with this Act, Senate Bill 327, Act of the 71st Legislature, Regular Session, 1989, controls over this Act.

The amendments were read.

On motion of Senator Glasgow and by unanimous consent, the Senate concurred in the House amendments to **S.B. 310** viva voce vote.

SENATE BILL 1379 WITH HOUSE AMENDMENTS

Senator Glasgow, on behalf of Senator Parmer, called **S.B. 1379** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment - McCollough

Amend **S.B. 1379** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Effective September 1, 1989, Subchapter C, Chapter 24, Government Code, is amended by adding Sections 24.508 through 24.515 to read as follows:

Sec. 24.508. 363RD JUDICIAL DISTRICT (DALLAS COUNTY). (a) The 363rd Judicial District is composed of Dallas County.

(b) The 363rd District Court shall give preference to criminal cases.

Sec. 24.509. 364TH JUDICIAL DISTRICT (LUBBOCK COUNTY). The 364th Judicial District is composed of Lubbock County.

Sec. 24.510. 365TH JUDICIAL DISTRICT (DIMMIT, MAVERICK, AND ZAVALA COUNTIES). The 365th Judicial District is composed of Dimmit, Maverick, and Zavala counties.

Sec. 24.511. 366TH JUDICIAL DISTRICT (COLLIN COUNTY). The 366th Judicial District is composed of Collin County.

Sec. 24.512. 367TH JUDICIAL DISTRICT (DENTON COUNTY). The 367th Judicial District is composed of Denton County.

Sec. 24.513. 368TH JUDICIAL DISTRICT (WILLIAMSON COUNTY). The 368th Judicial District is composed of Williamson County.

Sec. 24.514. 369TH JUDICIAL DISTRICT (ANDERSON AND CHEROKEE COUNTIES). The 369th Judicial District is composed of Anderson and Cherokee counties.

Sec. 24.515. 370TH JUDICIAL DISTRICT (HIDALGO COUNTY). The 370th Judicial District is composed of Hidalgo County.

SECTION 2. Effective September 1, 1990, Subchapter C, Chapter 24, Government Code, is amended by adding Sections 24.516 and 24.517 to read as follows:

Sec. 24.516. 371ST JUDICIAL DISTRICT (TARRANT COUNTY). (a) The 371st Judicial District is composed of Tarrant County.

(b) The 371st District Court shall give preference to criminal cases.

Sec. 24.517. 372ND JUDICIAL DISTRICT (TARRANT COUNTY). (a) The 372nd Judicial District is composed of Tarrant County.

(b) The 372nd District Court shall give preference to criminal cases.

SECTION 3. (a) Subchapter C, Chapter 24, Government Code, is amended by adding Sections 24.518 through 24.521 to read as follows:

Sec. 24.518. 373RD JUDICIAL DISTRICT (TARRANT COUNTY). (a) The 373rd Judicial District is composed of Tarrant County.

(b) The 373rd District Court shall give preference to criminal cases.

Sec. 24.519. 374TH JUDICIAL DISTRICT (TARRANT COUNTY). (a) The 374th Judicial District is composed of Tarrant County.

(b) The 374th District Court shall give preference to criminal cases.

Sec. 24.520. 375TH JUDICIAL DISTRICT (TARRANT COUNTY). (a) The 375th Judicial District is composed of Tarrant County.

(b) The 375th District Court shall give preference to criminal cases.

Sec. 24.521. 376TH JUDICIAL DISTRICT (TARRANT COUNTY). (a) The 376th Judicial District is composed of Tarrant County.

(b) The 376th District Court shall give preference to criminal cases.

(b) The board of the Tarrant County crime control district shall reimburse the state for the costs of salaries of judges and other court personnel and payments for retirement plans and other employee benefits for courts created under this section.

(c) This section takes effect September 1, 1991, but only if:

(1) **S.B No. 1694**, 71st Legislature, Regular Session, 1989, is enacted and becomes law; and

(2) the voters of Tarrant County vote to approve creation of the county crime control district and adoption of the proposed local sales and use tax before that date for that district.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1 - Rudd

Amend **C.S.S.B. 1379** by adding an appropriately numbered section to read as follows:

SECTION _____. There is appropriated to the judiciary section of the comptroller's department, out of the general revenue fund, the amount necessary to provide funding for the judicial districts created by this Act in the same amounts provided for existing judicial districts by **S.B. 222**, the General Appropriations Act for the 1990-1991 biennium.

Floor Amendment No. 2 - Holzheauser

Amend **C.S.S.B. 1379** as follows:

(1) On page 3, between lines 19 and 20, insert the following:

SECTION 4. (a) Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.522 to read as follows:

Sec. 24.522. 377th JUDICIAL DISTRICT (VICTORIA COUNTY). (a) The 377th Judicial District is composed of Victoria county. (b) The 377th Judicial District shall give preference to criminal cases.

(b) This court is created on the date on which funding is available:

(1) through legislative appropriation; or

(2) through the provisions of Chapter 317, Government Code; or

(3) by the Victoria County Commissioners Court to cover Judicial Salary and all necessary court expenses, until necessary State funding is obtained.

(2) Renumber subsequent section(s) appropriately.

The amendments were read.

On motion of Senator Glasgow and by unanimous consent, the Senate concurred in the House amendments to **S.B. 1379** viva voce vote.

SENATE BILL 1701 WITH HOUSE AMENDMENT

Senator Glasgow called **S.B. 1701** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Local and Consent Calendars
Commmittee Amendment - D. Hudson

Amend **S.B. 1701** by striking Subsection (b) on page 2 and substituting the following:

(b) If approved by student vote as provided by this subsection, for students enrolled at Tarleton State University, the board of regents of The Texas A&M University System may set the student use fee authorized under Subsection (a) of this section in an amount not to exceed $12 per semester hour. The fee increase may

not be imposed unless the increase has been approved by a majority of those students voting on the issue in a general student election in which the issue is presented.

The amendment was read.

Senator Glasgow moved to concur in the House amendment to **S.B. 1701.**

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Parker, Parmer, Washington.

SENATE BILL 1212 WITH HOUSE AMENDMENTS

Senator Santiesteban called **S.B. 1212** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment No. 1 - T. Smith

Amend **S.B. 1212** in Section 1 by relettering Subsections (d) and (e) of Section 52.033 as Subsections (e) and (f), and inserting a new Subsection (d) to read as follows:

(d) If the commission grants the petition to create the district, it may provide for additional terms, conditions, or restrictions.

Amendment No. 2 - T. Smith

Amend **S.B. 1212** as follows:

(1) On page 40, between lines 23 and 24, insert a new Section 6 to the bill to read as follows:

SECTION 6. Section 52.160, Water Code, is amended to read as follows:

Sec. 52.160. PLANNING. (a) In this section, "district" means a district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution that has the authority to regulate the spacing of or production from water wells, including districts created under this chapter.

(b) The district shall develop a comprehensive management plan [~~plans~~] for the most efficient use of the underground water, [~~and~~] for controlling and preventing waste of underground water, and for controlling and preventing subsidence. The district shall provide for public participation by conducting a hearing to receive testimony on the development of the plan. The plan may be reviewed annually but must be reviewed by the board at least once every two years.

(c) [~~(b)~~] The district shall specify in the management plan [~~plans~~], in as much detail as possible [~~practicable~~], the acts, procedures [~~procedure~~], performance, and avoidance that are or may be necessary to effect the plan [~~plans~~], including specifications and proposed rules. The district shall adopt rules that are necessary to implement the management plan. The district shall file a copy of the management plan and the rules with the commission.

(d) If two or more districts are located within the boundaries of a management area designated by the commission under this chapter, each district shall prepare a comprehensive management plan as required by Subsections (b) and (c) of this section, covering the district's respective territory. On completion of the plan, each district shall forward a copy of the new or revised management plan to the other districts in the management area.

(e) The board of directors of each district in the management area shall meet jointly with the boards of directors of the other districts in the management area

each even-numbered year to review the management plans and accomplishments for the management area. The boards shall consider the plans individually and shall compare them to other management plans then in force in the management area. In reviewing the management plans, the boards shall consider:

(1) the goals of each management plan and its impact on planning throughout the management area;

(2) the effectiveness of the measures prescribed by each management plan for conserving and protecting groundwater and preventing waste, and the effectiveness of these measures in the management area generally; and

(3) any other matters that the boards consider relevant to the protection and conservation of groundwater and the prevention of waste in the management area.

(f) A joint meeting of the boards of directors must be held in accordance with the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes). Notice of the meeting shall be given in accordance with the requirements for notice of district board of directors meetings under that Act. In addition, notice of the meeting shall be published not later than the 31st day before the date of the scheduled meeting in a newspaper or newspapers with general circulation in each county in the management area.

(g) A district in the management area may file a petition with the commission requesting an inquiry if the petitioner district believes that:

(1) another district in the management area has failed to adopt rules;

(2) the underground water in the management area is not adequately protected by the rules adopted by another district; or

(3) the underground water in the management area is not adequately protected due to the failure of another district to enforce substantial compliance with its rules.

(h) Not later than the 90th day after the date of receipt of a petition filed under Subsection (g) of this section, the commission may:

(1) review the petition and dismiss it if it finds that the evidence is not adequate to show that any of the conditions in Subsection (g)(1), (2), or (3) of this section exist or for any other reason; or

(2) select a review panel as provided by Subsection (i) of this section.

(i) A review panel consists of a chairman and four other members appointed by the commission. A director or general manager of a district that is located outside the management area may be appointed to the review panel. The commission may not appoint more than two members of the review panel from a single district. The commission also shall appoint a disinterested person to serve as a non-voting recording secretary for the review panel. The recording secretary may be an employee of the commission. The recording secretary shall record and document the proceedings of the panel.

(j) Not later than the 120th day after appointment, the review panel shall review the petition and any evidence relevant to the petition and, in a public meeting, prepare a report to the commission. The commission may direct the review panel to conduct public hearings at a location in the management area to take evidence on the petition. The review panel may attempt to negotiate a settlement or resolve the dispute between the petitioner and the district complained of.

(k) In its report, the review panel shall include:

(1) a summary of all evidence taken in any hearings on the petition;

(2) a list of any actions, including approval of a settlement, that it finds are appropriate for the commission to take and the reasons it finds those actions appropriate, or if it finds that no action by the commission is necessary, the reasons why it so finds; and

(3) any other information that the panel considers appropriate.

(l) After receiving the report of the review panel, the commission may dismiss the petition or the commission may conduct an investigation into the matter and may also hold hearings. If, after notice and a hearing, the commission determines that any one or more of the conditions listed in Subsection (g)(1), (2), or (3) of this section exist, the commission may:

(1) order the district to adopt rules to adequately protect the underground water;

(2) order the district to enforce substantial compliance with the district rules; or

(3) issue any other orders authorized by law.

(m) In making a determination under Subsection (l) of this section, the commission shall consider the report of the review panel and any settlement of the dispute that the review panel may recommend.

(n) On or after the first anniversary of the date the commission issues an order under Subsection (l) of this section, if the commission finds that the district subject to the order is not in substantial compliance with the order, the commission may, by subsequent order, assume jurisdiction over the regulation of underground water in the noncompliant district until the district is brought into compliance with orders issued under this section. The commission also may adopt and enforce any rules that the district would be authorized by law to adopt and enforce. Any rulemaking or enforcement of rules by the commission shall be in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(o) After the resumption of district control, the commission may appoint a review panel composed of the same persons as the original review panel appointed under Subsection (i) of this section or other persons to monitor the district's activities and to make annual reports to the commission for a period not to exceed two years after the date the district resumes control.

(2) Renumber existing Sections 6 through 20 of the bill as Sections 7 through 21 respectively.

Amendment No. 3 - Junell

On page 3, line 6 place a period after the word "tailwater".

Strike the remainder of line 6 and strike all of line 7 and line 8.

The amendments were read.

Senator Santiesteban moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on **S.B. 1212** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Santiesteban, Chairman; Bivins, Ratliff, Sims and Barrientos.

SENATE BILL 1090 WITH HOUSE AMENDMENT

Senator Santiesteban called **S.B. 1090** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment - Parker

Amend **S.B. 1090** as follows:

(1) Insert new Section 11 to read as follows and renumber current sections 11, 12, and 13, as 12, 13, and 14:

SECTION 11. To the extent of any conflict with this Act, House Bill 1513, Act of the 71st Legislature, Regular Session, 1989, has control over this Act.

The amendment was read.

On motion of Senator Santiesteban and by unanimous consent, the Senate concurred in the House amendment to **S.B. 1090** viva voce vote.

SENATE BILL 962 WITH HOUSE AMENDMENTS

Senator Sims called **S.B. 962** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment No. 1 - A. Smith

Amend **S.B. 962** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Article 11, Chapter II, The Texas Banking Code (Article 342-211, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 11. VIOLATION OF DUTY BY COMMISSIONER AND OTHERS—PENALTY. If the Commissioner or any officer or employee of the Banking Department shall [~~give advance notice of any call to be made pursuant to Article 9 of this chapter, or~~] divulge information or permit access to any file or record of the Banking Department in violation of Article 10 of this chapter; or knowingly be or become indebted to, or financially interested in, any state or private bank, directly or indirectly; or purchase any asset belonging to any state or private bank in the hands of the Commissioner for purposes of liquidation, he shall be deemed guilty of a misdemeanor in office, and shall upon conviction be fined not exceeding Two Hundred Dollars ($200), and forfeit his office or employment.

SECTION 2. Sections (a) and (b), Article 14, Chapter III, The Texas Banking Code (Article 342-314, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) A state bank or trust company may change its domicile to one of its previously established branch locations on prior written approval of the commissioner. A state bank or trust company may change its domicile to any other [a] location no more than thirty (30) miles from where it is located or to any place within the city of its domicile on[~~. No state bank may change its domicile without receiving the~~] prior approval of the State Banking Board.

(b) Applications for a change of domicile subject to approval of the State Banking Board shall be granted by the State Banking Board only upon good and sufficient proof that all the following conditions exist:

(1) a public necessity exists for the bank at the proposed location;

(2) proposed capital structure is adequate;

(3) volume of business in the community where the bank is to be located is such as to indicate profitable operation of the bank at that location;

(4) the proposed officers and directors have sufficient banking experience, ability, and standing to render success of the bank probable; and

(5) the applicants are acting in good faith.

SECTION 3. Article 5, Chapter IV, The Texas Banking Code (Article 342-405, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 5. DIRECTORS—QUALIFICATIONS. No person shall serve as director of a state bank when (1) the bank holds a judgment against him, or (2) holds a charged-off obligation [~~note~~] against him, or (3) he has been convicted of a felony.

SECTION 4. Section 3, Article 12, Chapter IV, The Texas Banking Code (Article 342-412, Vernon's Texas Civil Statutes), is amended to read as follows:

3. (a) If the Commissioner [~~subsequently~~] finds by examination or other credible evidence that an [~~the offending~~] officer, director or employee has committed or participated in a violation or practice listed in Section 1 of this article or has violated a cease and desist order that has become final [~~continued such violations or practices as previously charged and found by the Commissioner, after notice and demand made under Paragraph 1 above,~~] and further finds that removal from office is necessary and in the best interests of such bank and its depositors, creditors and stockholders, then the Commissioner may serve such officer, director or employee with a written notice of the Commissioner's intention to remove the officer, director, or employee from office or employment [~~an order of removal from office~~].

(b) If the Commissioner finds that a director or officer of a State bank, by conduct or practice relating to another bank or business institution that resulted in substantial financial loss or other damage, has shown personal dishonesty or a wilful or continuing disregard for the other bank's or business institution's safety or soundness and has shown unfitness to continue as a director or officer, the Commissioner may serve on the director or officer a written notice of the Commissioner's intention to remove the director or officer from office.

(c) If the Commissioner finds that a person participating in the conduct of the affairs of a State bank, by conduct or practice relating to the State bank, another bank, or another business institution that resulted in substantial financial loss or other damage, has shown personal dishonesty or a wilful or continuing disregard for the State bank's, other bank's, or other business institution's safety or soundness and has shown unfitness to participate in the conduct of affairs of the State bank, the Commissioner may serve on the person a written notice of the Commissioner's intention to prohibit the person's further participation in the conduct of the affairs of the State bank.

(d) A notice under Subsection (a), (b), or (c) of this section [~~Said order~~] shall state the grounds for removal or prohibition from participation with reasonable certainty and shall state the effective date of removal or prohibition, which must be[;] not less than ten (10) days after delivery or mailing of the notice [~~thereof~~]. Unless the bank, the directors or the person to whom the notice applies [~~removed~~] shall file a notice of appeal with the Banking Section of the Finance Commission within ten (10) days after such delivery or mailing of notice, whichever is the case, the [~~order of~~] removal or prohibition shall be effective and final and said person shall thereafter, according to the terms of the notice, be prohibited from further holding office or employment by, or participating in the affairs of, the said State [~~or private~~] bank. A copy of the notice [~~said order~~] shall be entered upon the minutes of the directors, and an officer shall acknowledge receipt [~~of such order~~] and certify to the Commissioner that such person has been removed from office, employment, or participation.

(e) If the Commissioner considers it necessary to protect the bank or the interests of its depositors, the Commissioner may deliver with a notice under Subsections (a) through (c) of this section an order immediately suspending the person from office, if a director or officer, and prohibiting a director, officer, or other person from further participation in the conduct of the affairs of the bank. The order takes effect on delivery and remains in effect pending completion of administrative

proceedings on the notice served under Subsection (a), (b), or (c), unless earlier stayed by a court in a proceeding authorized by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). The Commissioner shall also deliver a copy of the order to the State bank involved.

SECTION 5. Section 4, Article 1a, Chapter VIII, The Texas Banking Code (Article 342-801a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4. CONSERVATORSHIP PROCEEDINGS. After the period of supervision specified by the Commissioner for compliance, if it is determined that such bank has failed to comply with the lawful requirements of the Commissioner, then upon due notice and hearing, or by consent of the bank, the Commissioner may appoint a conservator. If on examination or other credible evidence the Commissioner finds that a bank is in an unsafe condition and immediate and irreparable harm is threatened to the bank, its depositors or stockholders, or the public, the Commissioner may appoint a conservator at any time before, during, or after the period of supervision. A conservator appointed under this section[, who] shall immediately take charge of such bank and all of the property, books, records, and effects thereof. The conservator shall conduct the business of the bank and take such steps toward the removal of the causes and conditions which have necessitated such order, as the Commissioner may direct. During the pendency of conservatorship the conservator shall make such reports to the Commissioner from time to time as may be required by the Commissioner, and shall be empowered to take all necessary measures to preserve, protect, and recover any assets or property of such bank, including claims or causes of action belonging to or which may be asserted by such bank, and to deal with the same in his own name as conservator, and shall be empowered to file, prosecute, and defend any suit or suits which have been filed or which may thereafter be filed by or against such bank which are deemed by the conservator to be necessary to protect all of the interested parties or any property affected thereby. The Banking Commissioner, or any duly appointed deputy, may be appointed to serve as the conservator. If the Banking Commissioner, however, is satisfied that such bank is not in condition to continue business in the interest of its depositors or creditors, under the conservator as above provided, the Banking Commissioner may proceed with an appropriate remedy provided by any other provision of this Code.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Amendment No. 2 - A. Smith

Amend **C.S.S.B. 962** by adding the following new Section 5 and renumbering the following sections:

SECTION 5. Article 5, Chapter VII, The Texas Banking Code (Article 342-705, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 5. ADVERSE CLAIMS TO DEPOSITS—DISCLOSURE AS TO AMOUNT DEPOSITED—SUBPOENAS AND PRODUCTION

Sec. 1. No financial institution [bank] shall be required to recognize the claim of any third party to any deposit, or withhold payment of any deposit to the depositor or to his order, unless and until the financial institution [bank] is served with citation or other appropriate process issuing out of a court of competent jurisdiction in connection with a suit instituted by such third party for the purpose of recovering or establishing an interest in such deposit; neither shall any financial institution [bank] be required to disclose or produce to third parties, or permit third

parties to examine the amount deposited by any depositor or other records pertaining to the deposits, [~~of~~] accounts, loans, or other transactions of a depositor, owner, borrower, or customer [~~bank records~~] except (i) where the depositor, [~~or~~] owner, borrower, or customer [~~of such deposit or other bank customer as~~] to whom the information is [~~records of accounts or other bank records are~~] to be disclosed is a proper or necessary party to a proceeding in a court of competent jurisdiction in which event the records pertaining to the deposits, accounts, loans, or other financial institution [~~bank~~] transactions of such depositor, owner, borrower, or customer shall be subject to disclosure or (ii) where the financial institution [~~bank~~] itself is a proper or necessary party to a proceeding in a court of competent jurisdiction, except that records pertaining to the deposits, accounts, loans, or other transactions of a depositor, owner, borrower, or customer may not be disclosed unless the court orders and the financial institution subsequently obtains the written consent of the depositor, owner, borrower, or customer to whom the records pertain, or (iii) in response to a subpoena issued by a legislative investigating committee of the Legislature of Texas, or (iv) in response to a request for examination of its records by the Attorney General of Texas pursuant to Article 1302-5.01 et seq. of the Texas Miscellaneous Corporation Laws Act.

Sec. 2. Unless ordered otherwise by a court of competent jurisdiction and unless consent is required under Section (1)(ii) of this article, before disclosure, production, or examination may be required under Section 1 of this article, the agency, body, or party issuing or obtaining the order, subpoena, or request for the disclosure, examination, or production of records of deposits, [~~or~~] accounts, loans, or [~~and~~] other financial institution [~~bank~~] records shall (1) give notice of such order, subpoena, or request to the depositor or financial institution [~~bank~~] customer in the manner provided by Rule 21a, Texas Rules of Civil Procedure, at least 10 days preceding the date when compliance with the order, subpoena, or request is required, and (2) certify to the financial institution [~~bank~~] (at the time the order, subpoena, or request is served or delivered to the financial institution [~~bank~~]) that the depositor or financial institution [~~bank~~] customer has been served with or has been mailed a copy of the order, subpoena, or request as required herein. A financial institution [~~bank~~] shall be entitled to recover from the party seeking the material reasonable costs of reproduction, postage, delivery, and other expenses which it incurs in complying with orders, subpoenas, [~~and~~] requests for the disclosure, consent to disclosure, examination, or production of records of deposits, [~~or~~] accounts, loans, and other financial institution [~~bank~~] records. A production, disclosure, or examination under Section 1(i) or (ii) of this article is not required until the costs that the financial institution is entitled to recover under this section have been paid to the financial institution in full or until the party seeking the material has posted a cost bond in an amount sufficient to ensure the recovery by the financial institution of all of those costs and expenses. The financial institution [~~bank~~] may notify its customer or depositor (unless ordered otherwise by a court of competent jurisdiction) of its receipt of any subpoena, order, or request for production.

Sec. 3. Each customer or depositor to whom notice of an order, subpoena, or request for disclosure, examination, or production of records of deposits or accounts or other financial institution [~~bank~~] records may, prior to the date specified therein for disclosure, examination, or production, file in an appropriate district court of the State of Texas a motion to quash the order, subpoena, or request or for protective order and shall make personal service of such motion on the party, agency, or body issuing or obtaining such order, subpoena, or request and on the financial institution [~~bank~~] prior to the date for disclosure, examination, or production. Any motion to quash or for protection shall be verified. Failure to file and serve such motion to quash or for protection shall constitute consent for all purposes to disclosure, production, or examination made pursuant to this article.

Sec. 4. In this article "financial institution" means a state or national bank or state or federal savings and loan association maintaining an office, branch, or agency office in this state or otherwise engaged in the business of lending money or extending credit in this state.

Sec. 5. (a) This article does not restrict or apply to amendment of a depository contract, addition of a new term or provision to a depository contract, or disclosure or production of deposits or of records of accounts and other bank records if the amendment, addition, or disclosure is made under or in substantial compliance with applicable federal law, including regulations. This article does not restrict or apply to the use or disclosure by a bank of information or records pertaining to deposits, accounts, or bank transactions if the use or disclosure is made in good faith in the usual course of the financial business of the bank, is made by the bank in the course of the litigation affecting its interests, or is made with express or implied consent of the depositor or customer. This article does not apply to the investigation or prosecution of criminal offenses.

(b) Failure of the depositor or bank customer to receive a notice given under this article respecting a depository contract or a copy of a subpoena, request, or other order does not make the notice, subpoena, request, or order ineffective if it was mailed or served as provided by this article.

Amendment No. 3 - Parker

Amend **C.S.S.B. 962** by adding a new section, appropriately numbered, to read as follows:

SECTION _____. Chapter IX, The Texas Banking Code (Article 342-901 et seq., Vernon's Texas Civil Statutes), is amended by adding Article 17 to read as follows:

Art. 17. IDENTIFICATION OF FACILITIES. A bank may not use a form of advertising, including a sign or printed or broadcast material, that implies or tends to imply that a branch facility is a separately chartered or organized bank. A sign at a branch facility and all official bank documents, including checks, cashier's checks, loan applications, and certificates of deposit, must bear the name of the principal bank and if a separate branch name is used must identify the facility as a branch.

(2) Add a new Section 121 of the bill to read as follows:

SECTION 121. A sign existing on the effective date of this Act shall comply with Article 17, Chapter IX, The Texas Banking Code, as added by this Act, before June 1, 1990. Bank documents existing on the effective date of this Act that do not comply with that article may be used until June 1, 1990. The Banking Commission may grant an extension of time not to exceed six months for compliance upon a showing of hardship.

(3) Renumber sections appropriately.

Amendment No. 4 - Parker

Amend **C.S.S.B. 962** by adding a new section, appropriately numbered, to read as follows:

SECTION _____. Article 8, Chapter V, The Texas Banking Code (Article 342-508, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 8. LOAN FEES PROHIBITED—EXCEPTION. No bank shall charge or collect any loan fee or any other charge, by whatever name called, for the granting of a consumer loan unless authorized by law. Provided, however, a bank may require an applicant for a loan or discount to pay the cost of any abstract, attorney's

opinion or title insurance policy, or other form of insurance, and filing or recording fees or appraisal fees. Expenses necessary or proper for the protection of the lender, and actually incurred in connection with the making of the loan may be charged. In all consumer loan transactions in which the amount loaned is $100 or more and the loan period is one month or more, a bank may charge any borrower the reasonable value of services rendered in connection with the making of any loan, including the drawing of notes, the taking of acknowledgments and affidavits, the preparation of financial statements, and the investigation or analysis of the financial responsibility of the borrower or any endorser, surety or co-signer, in an amount agreed upon, but not to exceed $15 for each loan transaction. If the amount that the bank charges for those services exceeds $15, the amount of interest contracted for shall be forfeited[~~, which shall be in lieu of all interest and other charges which could otherwise be collected in connection with the loan~~]. No bank shall induce or permit any person, or husband and wife, to be obligated directly or indirectly under more than one loan contract under this article at the same time for the purpose, or with the effect, of obtaining a higher authorized charge than would otherwise be permitted. The charge authorized herein shall not apply to any renewal or extension of an obligation on which the charge has been previously imposed; provided, however, that such renewal or extension may bear interest at the rate that is otherwise provided by law. The charge shall not apply to a loan transaction wherein the borrower applies all or a portion of the loan proceeds to discharge a prior loan made by the same lender to the same borrower and in connection with which the above charge was imposed. To the extent of any conflict between this article and a provision of Chapter 2, 3, 4, 5, 6, 6A, 7, 8, or 15, Title 79, Revised Statutes (Article 5069-2.01 et seq., Vernon's Texas Civil Statutes), the provision of Title 79, Revised Statutes, prevails.

(2) Add a new Section 121 of the bill to read as follows:

SECTION 121. The amendment of Article 8, Chapter V, The Texas Banking Code (Article 342-508, Vernon's Texas Civil Statutes), by this Act applies only to a loan made on or after the effective date of this Act. A loan made before the effective date of this Act is governed by the law in effect when the loan was made, and that law is continued in effect for that purpose.

(3) Renumber sections appropriately.

Amendment No. 5 - Parker

Amend **C.S.S.B. 962** by adding a new section, appropriately numbered, to read as follows:

SECTION _____. Chapter VI, The Texas Banking Code (Article 342-601 et seq., Vernon's Texas Civil Statutes), is amended by adding Article 9 to read as follows:

Art. 9. ATTACHMENT, INJUNCTION, OR EXECUTION

Sec. 1. An attachment, injunction, or execution may not be enforced against a financial institution unless there is a final judgment in the proceeding in which the attachment, injunction, or execution is issued.

Sec. 2. For the purposes of this article, a judgment is final if all appeals have been exhausted or foreclosed by law.

Sec. 3. In this article, "financial institution" means a state or national bank or state or federal savings and loan association maintaining an office, branch, or agency office in this state or otherwise engaged in the business of lending money or extending credit in this state.

(2) Add a new Section 121 of the bill to read as follows:

SECTION 121. Article 9, Chapter VI, The Texas Banking Code (Article 342-601 et seq., Vernon's Texas Civil Statutes), as added by this Act, applies only to an attachment, injunction, or execution issued on or after September 1, 1989.

(3) Renumber sections appropriately.

The amendments were read.

Senator Sims moved to concur in the House amendments to **S.B. 962.**

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Parker, Parmer, Washington.

SENATE BILL 1325 WITH HOUSE AMENDMENT

Senator Santiesteban called **S.B. 1325** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment - Junell

Amend **S.B. 1325** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Section 1.04, Alcoholic Beverage Code, is amended by adding Subdivisions (21), (22) and (23) to read as follows:

(21) "Minibar" means a closed container in a hotel guestroom with access to the interior of the container restricted by a locking device which requires the use of a key, magnetic card, or similar device.

(22) "Minibar key" means the key, magnetic card, or similar device which permits access to the interior of a minibar.

(23) "Guestroom" means a sleeping room (including any adjacent private living area) in a hotel which is rented to guests for their use as an overnight accommodation.

SECTION 2. Alcoholic Beverage Code, Title 3, Subdivision A is amended by adding a new Chapter 51 to read as follows:

CHAPTER 51. MINIBAR PERMIT

SECTION 51.01. ELIGIBILITY FOR PERMIT. The commission or the administrator may issue a minibar permit only to the holder of a mixed beverage permit issued for operation in a hotel.

SECTION 51.02. AUTHORIZED ACTIVITIES. The holder of a minibar permit may sell the following alcoholic beverages out of a minibar:

(1) distilled spirits in containers of not less than 1 ounce nor more than 2 ounces.

(2) wine and vinous liquors in containers of not more than 13 fluid ounces, and

(3) beer, ale, and malt liquor in containers of not more than 12 fluid ounces.

SECTION 51.03. LIMITED ACCESS TO MINIBAR. (a) Minibars shall be of such design as to prevent access to alcoholic beverages to all persons who do not have a minibar key. The minibar key shall be different from the hotel guestroom key and the permittee shall not provide the minibar key to any person who is not of legal drinking age.

(b) A permittee may not provide a minibar key to any person other than an employee of the permittee or a registered guest of the hotel.

SECTION 51.04. STOCKING RESTRICTIONS. (a) All employees handling distilled spirits, wine, beer, ale, and malt liquor being stocked in the minibar must be at least 18 years of age.

(b) A minibar may not be restocked or replenished between the hours of 9 P.M. and 9 A.M., or on any Sunday, and it may contain no more than 40 individual containers of alcoholic beverages at any one time.

(c) A minibar may only be maintained, serviced or stocked with alcoholic beverages by a person who is an employee of the holder of a minibar permit, and no other person shall be authorized to add alcoholic beverages to a minibar or, with the exception of a registered hotel guest consumer, to remove alcoholic beverages from a minibar.

(d) The holder of a minibar permit shall adhere to standards of quality and purity of alcoholic beverages prescribed by the commission and shall destroy any alcoholic beverages contained in a minibar on the date which is considered by the manufacturer of the alcoholic beverage on the date the product becomes inappropriate for sale to a consumer.

SECTION 51.05. FEE. The annual state fee for an original minibar permit is $2,000.00. The annual state fee for the first renewal of a minibar permit is $1,500.00. The annual state fee for the second renewal of a minibar permit is $1,000.00. The annual state fee for the third and each subsequent renewal of a minibar permit is $750.00.

SECTION 51.06. PROHIBITED INTERESTS. The holder of a minibar permit may not have a direct or indirect interest in a package store permit, and no package store may be located on the premises of a hotel in which a mixed beverage permittee holds a minibar permit.

SECTION 51.07. MIXED BEVERAGE PERMIT IS PRIMARY. All purchases made by a minibar permittee shall be made under the authority of and subject to the limitations imposed upon the mixed beverage permit held by the permittee. All sales made by a minibar permittee shall, for tax purposes, be considered sales under the mixed beverage permit held by the permittee and shall be taxed accordingly. To insure that the marketing of alcoholic beverages for stocking minibars is not used by suppliers for purposes of inducement or unauthorized or illegal advertising, it is further provided that:

(1) No person who holds a permit or license authorizing sale of any alcoholic beverage to mixed beverage permittees may sell or offer to sell alcoholic beverages to a minibar permittee at a cost less than the seller's laid-in cost plus the customary and normal profit margin applicable to other container sizes. The laid-in cost shall be defined as the manufacturer's or supplier's invoice price, plus all applicable freight, taxes and duties.

(2) Proof of laid-in cost shall become a part of the permanent records of each permittee or licensee supplying alcoholic beverages to minibar permittees and be available for a period of two years for inspection by the commission.

(3) No alcoholic beverages offered for use in a minibar may be sold in connection with or conveyed as part of any promotional program providing a discount on the purchase of any other type, size, or brand of alcoholic beverage.

(4) Distilled spirits in containers with a capacity of more than one but less than two fluid ounces must be invoiced separately from any other alcoholic beverage and the price must be shown on the invoice.

(5) Distilled spirits beverages in containers with a capacity of more than one but less than two fluid ounces may not be returned by the holder of a minibar permit. Neither may such beverages be exchanged by the holder of a minibar permit or redeemed for any reason other than damage noted at the time of delivery and approved by the commission. Claims for breakage or shortage after delivery to a minibar permittee shall not be allowed.

(6) No person holding a wholesaler's, local distributor's, or package store permit may participate in the cost of producing any room menu, beverage list, table tent, or any other device or novelty, written or printed, relating to the sale of distilled

spirits in containers with a capacity of more than one but less than two fluid ounces. No permittee or licensee authorized to sell alcoholic beverages to a minibar permittee may pay for or contribute to the cost of providing in-house television or radio announcements to be used by any holder of a minibar permit to promote the sale of alcoholic beverages.

SECTION 51.08. DISTILLED SPIRITS PURCHASES. Distilled spirits purchased for resale in a minibar must be purchased in unbroken cases, and such cases shall bear the appropriate identification stamps.

SECTION 51.09. COIN OPERATED MACHINES PROHIBITED. Nothing in this chapter shall be construed as authorizing, nor may the commission or administrator authorize the sale of any alcoholic beverage from a coin operated machine or similar device.

SECTION 51.10. COMMISSION MAY ADOPT RULES. The commission may adopt rules necessary to regulate the use and operation of minibars.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Santiesteban moved to concur in the House amendment to **S.B. 1325**.

The motion prevailed by the following vote: Yeas 27, Nays 1.

Nays: Dickson.

Absent-excused: Parker, Parmer, Washington.

SENATE BILL 510 WITH HOUSE AMENDMENTS

Senator Tejeda called **S.B. 510** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment - Campbell

Amend **S.B. 510** on page 1 as follows:

(1) Between lines 10 and 11, add a new Section 2 to read as follows:

SECTION 2. Section 4.02(d), Chapter 685, Acts of the 70th Legislature, Regular Session, 1987 (Article 4477-9b, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) The procedures adopted by the county commissioners under this section must require a hearing before abatement of the nuisance by the county if a hearing is requested. The hearing must be held before the county commissioners or any board, commission, or official designated by the county commissioners. The county commissioners may designate a board, commission, or official to conduct each hearing.

(2) Renumber the remaining sections of the bill accordingly.

Amendment - Campbell

Amend **S.B. 510** on page 1, line 9 by substituting 850,000 for 900,000 to read as follows:

unincorporated area of a county having a population of 850,000...

The amendments were read.

On motion of Senator Tejeda and by unanimous consent, the Senate concurred in the House amendments to **S.B. 510** viva voce vote.

SENATE BILL 1103 WITH HOUSE AMENDMENT

Senator Tejeda called **S.B. 1103** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Amendment - Cain

Amend **S.B. 1103** by adding the following new Sec. 3 to new Art. 6448b in SECTION 1 of the bill:

Sec. 3. Any inspection, investigation, or surveillance performed on the site of a manufacturing facility shall be performed in compliance with the safety rules or regulations of the facility, including security clearance at the front gate if appropriate.

The amendment was read.

Senator Tejeda moved to concur in the House amendment to **S.B. 1103**.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Parker, Parmer, Washington.

SENATE BILL 328 WITH HOUSE AMENDMENTS

Senator Tejeda called **S.B. 328** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment - Wilson

Amend **S.B. 328** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Section 9a, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6675a-9a, Vernon's Texas Civil Statutes), is amended by amending Subsections (a), (c), and (d) and adding Subsections (g), (h), (i), and (j) to read as follows:

(a) The Commissioners Court of a County by order may impose, in addition to the fee imposed by this Act for registering a vehicle in this State, an extra fee in an amount set by the Commissioners Court that does not exceed Ten Dollars ($10) [~~of Five Dollars ($5)~~] for each vehicle registered in the County. A vehicle that may be registered under this Act without payment of a registration fee may be registered in the County without payment of the extra fee.

(c) The County Tax Collector of a County imposing a fee under this section shall collect the extra fee for a vehicle simultaneously with the collection of other fees imposed under this Act for the vehicle. The County Tax Collector in a county with a population of 2.4 million or more shall:

(1) remit one-fourth of the amount by which a fee collected under this subsection exceeds Five Dollars ($5) to the treasurer of the municipality with the largest population in the county to be used only for road and bridge maintenance in the municipality;

(2) remit one-fourth of the amount by which a fee collected under this subsection exceeds Five Dollars ($5) to the treasurer of the municipality with the

second largest population in the county, to be used only for road and bridge maintenance in the municipality; and

(3) deposit one-half of the amount by which a fee collected under this subsection exceeds Five Dollars ($5) in the County Road and Bridge Fund to be used in the county commissioners court precincts proportionately based on the population of each precinct.

(d) The Department shall collect the extra fee on a vehicle owned by a resident of a County imposing a fee under Subsection (a) of this section that under this Act must be registered directly with the Department. The Department shall remit all fees collected for the County under this subsection to the County Treasurer for deposit in the County Road and Bridge Fund, except that of the amount by which a fee collected for a county with a population of 2.4 million or more exceeds Five Dollars ($5) the Department shall remit:

(1) one-half to the County Treasurer for deposit in the County Road and Bridge Fund to be used in the county commissioners court precincts proportionately based on the population of each precinct;

(2) one-fourth to the treasurer of the municipality with the largest population in the county, to be used only for road and bridge maintenance in the municipality; and

(3) one-fourth to the treasurer of the municipality with the second largest population in the county, to be used only for road and bridge maintenance in the municipality.

(g) In this section "population" means the population shown by the most recent federal decennial census.

(h) If the Commissioners Court of a County by order approves the execution of a written contract that meets the requirements of Subsection (i) of this section between the county and a research authority created pursuant to Chapter 949, Acts of the 70th Legislature, Regular Session, 1987 (Article 4413(47e), Vernon's Texas Civil Statutes), the County Tax Collector shall, except as otherwise provided by this section, allocate to the research authority as a refund of a portion of the fee authorized to be collected pursuant to this section the amount provided in the written contract.

(i) A written contract must:

(1) be in substantially the same form, except as to the source and timing of funds to be paid pursuant to the contract, as the contract executed by the research authority with one or more other political subdivisions of this state;

(2) expire not later than January 1, 2002;

(3) provide that to the extent amounts payable under the contract are payable from funds collected pursuant to this Act, those payments may only be made from surplus funds collected pursuant to this Act, from funds allowed to the County as an expense of collecting the fee, or from the refund authorized by Subsection (h) of this section;

(4) provide that funds or any amounts earned from the investment of those funds received by the research authority pursuant to this Act may not be expended for payment of salary to an employee of the research authority; and

(5) provide that funds received by the research authority pursuant to this Act may only be used to pay the costs of the acquisition of land or interests in land or to pay expenses or other costs incidental to that acquisition.

(j) In determining whether one or more contracts are in substantially the same form for purposes of Subsection (i) of this section, the fact that payments required to be made pursuant to a contract are determined on the basis of a uniform amount for each motor vehicle registered in the political subdivision may not be considered.

SECTION 2. Section 10(c-2), Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6675a-10, Vernon's Texas Civil Statutes), is amended to read as follows:

(c-2) On Monday of each week each County Tax Collector in a County imposing a fee under Section 9a of this Act shall, except as provided by Sections 9a(c), (d), (h), and (i) of this Act, deposit in the County Depository of the County to the credit of the County Road and Bridge Fund, an amount equal to ninety-seven per cent (97%) of the extra fees collected under Section 9a of this Act. The County Tax Collector shall remit to the Department the remaining three per cent (3%) to defray costs incurred by the Department in administering its duties under Section 9a of this Act.

SECTION 3. Sections 9a(c), (d), (h), and (i), and 10(c-2), Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Articles 6675a-9a and 6675a-10, Vernon's Texas Civil Statutes), as amended and added by this Act, apply only to disposition of a fee collected on or after the effective date of this Act. Disposition of a fee collected before the effective date of this Act is governed by the law in effect at the time the fee was collected, and that law is continued in effect for that purpose.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Floor Amendment No. 1 - Taylor

Amend **C.S.S.B. 328** by making the following changes:

on page 3 strike lines 8 through 27

on page 4 strike lines 1 through 16

on page 4 line 23 strike "(h), and (i)" then insert "and" between c, and d

on page 5 line 4 strike "(h), and (i)" then insert "and" between c, and d

Floor Amendment No. 2 - Taylor

Amend **C.S.S.B. 328** as follows:

(1) On page 1, line 22, strike the colon and substitute the following: "deposit the amount by which a fee".

(2) On page 1, strike lines 23 and 24.

(3) On page 2, strike lines 1-9.

(4) On page 2, strike lines 19-27, and substitute the following: deposit in the County Road and Bridge Fund, except that the Department shall remit the amount by which a fee collected for a county with a population of 2.4 million or more exceeds Five Dollars ($5) to the County Treasurer for deposit in the County Road and Bridge Fund to be used in the county commissioners court precincts proportionately based on the population of each precinct.

(5) On page 3, strike lines 1-5.

Floor Amendment No. 1 on Third Reading - Clemons

Amend **C.S.S.B. 328** on page 1 as follows:

(1) On line 21, after the period, insert the following: The county tax collector shall give the person paying the fee the following written statement:

"This fee is assessed by order of the Commissioners Court of this county, and not by the County tax collector."

This statement should be in print large enough to be clearly legible.

(2) The underlined sentence beginning on line 21 and ending on line 22, shall be moved to a new subsection (d), and all other subsections renumbered accordingly.

Floor Amendment No. 2 on Third Reading - Turner

Amend **C.S.S.B. 328** as follows:

(1) Strike Section 1 of the bill and substitute the following:

SECTION 1. Section 9a(a), Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6675a-9a, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The Commissioners Court of a County by order may impose, in addition to the fee imposed by this Act for registering a vehicle in this State, an extra fee in an amount set by the Commissioners Court that does not exceed Ten Dollars ($10) ~~[of Five Dollars ($5)]~~ for each vehicle registered in the county, except that in a county with a population of 2.4 million or more, the extra fee may not exceed Five Dollars ($5).

(2) Strike Sections 2 and 3 of the bill.

(3) Renumber the subsequent sections accordingly.

The amendments were read.

Senator Tejeda moved to concur in the House amendments to **S.B. 328.**

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Parker, Parmer, Washington.

SENATE BILL 314 WITH HOUSE AMENDMENTS

Senator Tejeda called **S.B. 314** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment - Campbell

Amend **S.B. 314** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Chapter 2, Title 116, Revised Statutes, is amended by adding Article 6702-3 to read as follows:

Art. 6702-3. COUNTY IMPROVEMENT OF SUBDIVISION ROADS IN UNINCORPORATED AREAS. (a) This article applies only to a subdivision or a part of a subdivision in an unincorporated area of the county.

(b) In this article, "improvement" means the construction, reconstruction, or repair of a road.

(c) The commissioners court of a county may order that the county improve a road in a subdivision to comply with any county standards for roads and assess all or part of the costs of the improvement pro rata against the owners of real property in the subdivision if:

(1) the commissioners court determines that the improvement is necessary for the public health, safety, or welfare of the residents of the county; and

(2) a majority of the record owners of real property in the subdivision vote by mailed ballot in favor of the county improvement and assessment.

(d) Before ordering an improvement and assessment under this article, the commissioners court must give notice of the proposed improvement and assessment

and must hold a public hearing on the question. The notice must be published at least twice in a newspaper of general circulation in the county and must state that, on a date that is specified in the notice and that is after the 30th day after the date the notice is first published, the commissioners court will hold a public hearing to consider the question of whether it should order the improvement and assessment.

(e) Within 10 days after the date of the public hearing, the commissioners court shall send by certified mail to each owner of real property in the subdivision a ballot on the question and a return addressed, stamped envelope for the return of the completed ballot to the county clerk. The ballot must be printed to show the maximum amount of assessment that would be made against each property in the subdivision if a majority of the record owners of real property in the subdivision favor the proposition. Within 30 days after the date of the public hearing, the county clerk shall tally the returned ballots and declare the results to the commissioners court. If a majority of record owners of real property in the subdivision vote by returned ballot in favor of the improvement and assessment, the commissioners court shall order that the county make the improvements and assess the costs of the improvements against the real property owners.

(f) If the combined total of those record owners of real property in the subdivision voting against the improvement and assessment and those record owners not voting constitutes a majority of the record owners, the commissioners court may not order the improvement and assessment and may not propose the order again for four years after the date that the county clerk declares the results of the vote to the commissioners court.

(g) In making an assessment under this article, the commissioners court may provide the time, terms, and conditions of payment and default of the assessment, except that the commissioners court may not require the payment of any interest on an assessment.

(h) An assessment is a lien on the property assessed from the date that the improvements are ordered, and the property owner is personally liable for the amount of the assessment.

(i) Not later than the 15th day after the date that a property owner receives an assessment made under this article, the owner may appeal the assessment by filing a petition in the district court having jurisdiction in the county. The appeal may be made on the basis of the assessment amount or any inaccuracy, irregularity, invalidity, or insufficiency of the proceedings or the road improvements under this article.

(j) A road improved under this article is a county road, and the county shall maintain the road in accordance with county road standards.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Floor Amendment on Third Reading - Beauchamp

Amend **C.S.S.B. 314** by striking lines 10, 11 and 12, page 3 and substituting:

"(h) An assessment shall be secured by a lien against the real property of the assessed property owner. The lien shall be effective from the date that written notice of the assessment is filed for record and recorded in the office of the county clerk of the county in which the assessed property is located. Such written notice shall be in recordable form and contain therein the dollar amount of the assessment, the legal description of the property assessed and the name and address of each property owner. The lien securing the assessment shall be inferior only to tax liens and to

bona fide mortgage liens recorded prior to the effective date of the assessment lien. Each property owner shall be personally liable for the amount of the assessment."

The amendments were read.

Senator Tejeda moved to concur in the House amendments to **S.B. 314.**

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Parker, Parmer, Washington.

SENATE BILL 1426 WITH HOUSE AMENDMENTS

Senator Truan called **S.B. 1426** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment No. 1 - Madla

Amend **S.B. 1426** by adding an appropriately numbered SECTION and by renumbering subsequent SECTIONS as appropriate, to read as follows:

SECTION ___. (a) Subchapter B, Chapter 32, Human Resources Code, is amended by adding Sections 32.081 to read as follows:

Section 32.081. ICF-MR PAYMENT RATES. (a) The board shall set the payment rates for ICF-MR facilities at least annually.

(b) The board shall adopt by rule the methodology used by the department in setting payment rates for ICF-MR facilities. The methodology shall clearly define the procedures and methods used in projecting the costs of economic and efficient facilities and the procedures and methods used in setting payment rates that reasonably reimburse facilities at each level of care and in each class of providers (including size categories).

(c) The board shall ensure that the methodology used in projecting costs and setting payment rates and its implementation is the same for state operated ICF-MR facilities and for private ICF-MR facilities. Methods used to project costs including those involving the handling of gifts, grants and donations; upper limits on facility and administrative costs; occupancy adjustments; and in assessing the cost impact of new or revised requirements must be the same for state operated and private facilities.

(d) To the extent allowed by federal law, any differences in methodology or its implementation between state operated facilities and private facilities must be stated explicitly in the rule, must be related to actual differences in the nature of the expenses incurred by the class of providers (including size categories), and must not favor state operated facilities in setting payment rates. When the proposed rule or amendments to the rule are published for public comment, the commissioner must certify that any differences in methodology between classes of providers (including size categories) are necessitated by cost structure and will not favor state operated facilities in the setting of payment rates.

(b) This section takes effect September 1, 1989.

Amendment No. 2 - Eckels, Hilbert, Shelley

Amend **S.B. 1426** by adding on page 9, between lines 17 and 18, the following:

(c) The contract must provide that a community based residential facility which is a "family home" as defined in the Community Homes for Disabled Persons Act (Article 1011n, Vernon's Texas Civil Statutes) must be used only to house "disabled persons" as defined in Sec. 2(3) of the Community Homes for the

Disabled Act (Art. 1011n Vernon's Texas Civil Statutes) and must prohibit the use of such facility for purposes such as restitution centers, homes for substance abusers, or halfway houses.

On line 18 renumber Subsection (c) as (d).

The amendments were read.

Senator Truan moved to concur in the House amendments to **S.B. 1426**.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Parker, Parmer, Washington.

SENATE BILL 1669 WITH HOUSE AMENDMENT

Senator Truan called **S.B. 1669** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Local and Consent Calendars
Committee Amendment - Earley

Amend **S.B. 1669** as follows:

(1) On page 1, strike lines 21-25 and substitute the following:
interest; and

(B) matters involving the juvenile and child welfare law of this state.

(2) On page 2, strike lines 4-7 and substitute the following:
two years before appointment or election;

(3) be licensed to practice law in this state; and

(4) have been a practicing attorney or a judge of a court in this state, or both combined, for at least four years before election or appointment.

(3) On page 2, strike lines 11 and 12 and substitute the following:
annual salary in an amount of not less than $43,000. The judge of a county

(4) On page 2, lines 14 and 15, strike ", in the same manner as the county judge".

(5) On page 3, line 2, between "(g)" and "The", insert the following:

The judge of a county court at law shall appoint an official shorthand reporter for the court. The reporter must have the qualifications required by law for official shorthand reporters. The reporter shall be a sworn officer of the court and shall hold office at the pleasure of the court. The reporter must take the oath required of official court reporters.

(6) On page 3, strike lines 7-11 and substitute "law for county courts.".

(7) On page 3, strike lines 13-15 and substitute "pay of jurors for county courts apply to a county court at law. Jurors regularly"

(8) On page 3, between lines 18 and 19, insert the following:

(j) The judge of a county court and the judge of a county court at law may transfer cases to and from the dockets of their respective courts in matters within their jurisdiction, in order that the business may be distributed between them. However, a case may not be transferred from one court to another without the consent of the judge of the court to which it is transferred, unless it is within the jurisdiction of the court to which it is transferred.

(k) In all cases transferred to a county court at law and in all cases transferred to the county court by order of the judge of the other court, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which the transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their

appearance or to fulfill the obligations on the bonds or recognizances at the terms of court to which the cases are transferred as are fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances taken in the case are valid and binding as though originally issued out of the court to which the transfer is made.

(l) The county judge and the judge of a county court at law may freely exchange benches and the courtroom with each other in matters within their jurisdiction, so that if one is ill, disqualified, or otherwise absent, the other may hold court for him without the necessity of transferring the case involved. However, the judge of one court may not assume the bench of the other court without the consent of the judge of the other court set forth by order recorded in the minutes of the other court. Either judge may hear all or any part of a case pending in the county court or a county court at law, but only in matters within his jurisdiction, and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his own docket. Each judgment and order shall be entered in the minutes of the court in which the case is pending. The provisions for the exchange of benches by and between the judges are in addition to the provisions in this section for the selection and appointment of a special judge of a court at law.

(m) The judge of the county court and the judge of a county court at law may agree on a plan governing the filing, numbering, and docketing of cases within the concurrent jurisdiction of their courts and the assignment of those cases for trial. The plan may provide for the centralized institution and filing of all such cases with one court, clerk, or coordinator designated by the plan, and for the systemized assignment of those cases to the courts participating in the plan, and the provisions of the plan, and for the systemized assignment of those cases to the courts participating in the plan, and the provisions of the plan for the centralized filing and assignment of cases shall control notwithstanding any other provisions of this section. If the judges of the county court and the county court at law are unable to agree on a filing, docketing, and assignment of cases plan, the presiding judge of the 36th Judicial District shall design a plan for both courts.

(n) The county clerk shall establish a separate docket for the court created by this Act from among pending matters filed originally in the county court of San Patricio County and shall transfer those matters to the docket of the court created by this Act.

(9) On page 4, strike lines 21 and 22 and substitute "County is created January 1, 1993.".

(10) On page 4, lines 23-26, strike Section 5 of the bill and substitute a new Section 5 to read as follows:

SECTION 5. Notwithstanding Section 25.0009, Government Code, the initial vacancy on creation of the County Court at Law of San Patricio County shall be filled by election. The office of judge of the County Court at Law of San Patricio County exists for purposes of the primary and general elections in 1992. The qualified voters of the county shall elect the initial judge of the County Court at Law of San Patricio County at the general election in 1992 for a two-year term beginning January 1, 1993. Thereafter, the judge shall be elected for a four-year term as provided by Article XVI, Section 65, of the Texas Constitution. A vacancy after the initial vacancy is filled as provided by Section 25.0009, Government Code.

The amendment was read.

On motion of Senator Truan and by unanimous consent, the Senate concurred in the House amendment to **S.B. 1669** viva voce vote.

SENATE BILL 268 WITH HOUSE AMENDMENT

Senator Uribe called **S.B. 268** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Floor Amendment on Third Reading - Marchant

Amend **S.B. 268**, on third reading, by striking all below the enacting clause and substituting the following:

SECTION 1. Section 143.081, Local Government Code, as amended by Senate Bill 220, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

Sec. 143.081. DETERMINATION OF PHYSICAL AND MENTAL FITNESS. (a) This section does not apply to a municipality with a population of 1.5 million or more.

(b) If a question arises as to whether a fire fighter or police officer is sufficiently physically or mentally fit to continue the person's duties, the fire fighter or police officer shall submit to the commission a report from the person's personal physician, psychiatrist, or psychologist, as appropriate.

(c) [~~(b)~~] If the commission, the department head, or the fire fighter or police officer questions the report, the commission shall appoint a physician, psychiatrist, or psychologist, as appropriate, to examine the fire fighter or police officer and to submit a report to the commission, the department head, and the person.

(d) [~~(c)~~] If the report of the appointed physician, psychiatrist, or psychologist, as appropriate, disagrees with the report of the fire fighter's or police officer's personal physician, psychiatrist, or psychologist, as appropriate, the commission shall appoint a three-member board composed of a physician, a psychiatrist, and a psychologist, or any combination, as appropriate, to examine the fire fighter or police officer. The board's findings as to the person's fitness for duty shall determine the issue.

(e) [~~(d)~~] The fire fighter or police officer shall pay the cost of the services of the person's personal physician, psychiatrist, or psychologist, as appropriate. The municipality shall pay all other costs.

SECTION 2. Subchapter G, Chapter 143, Local Government Code, is amended by adding Section 143.1115 to read as follows:

Sec. 143.1115. DETERMINATION OF PHYSICAL AND MENTAL FITNESS. (a) This section provides the exclusive procedure for determining whether a fire fighter or police officer is sufficiently physically or mentally fit to continue the person's duties or assignment.

(b) On receiving a written order by the department head, a fire fighter or police officer shall submit to the commission a report from the person's personal physician, psychiatrist, or psychologist, as appropriate.

(c) If the commission, the department head, or the fire fighter or police officer questions the report, the commission shall appoint a physician, psychiatrist, or psychologist, as appropriate, to examine the fire fighter or police officer and to submit a report to the commission, the department head, and the person.

(d) If the report of the appointed physician, psychiatrist, or psychologist, as appropriate, disagrees with the report of the fire fighter's or police officer's personal physician, psychiatrist, or psychologist, as appropriate, the commission shall appoint an independent three-member board composed of a physician, a psychiatrist, and a psychologist, or any combination, as appropriate, to examine the fire fighter or police officer. The board shall submit to the commission a written report of its finding regarding whether the fire fighter or police officer is sufficiently physically or mentally fit to continue the person's duties or assignment. The

commission, at its next regularly scheduled meeting after the date it receives the report of the board, shall determine whether the fire fighter or police officer is sufficiently physically or mentally fit to continue the person's duties or assignment. The commission shall base its determination exclusively on the report of the board.

(e) The fire fighter or police officer shall pay the cost of the services of the person's personal physician, psychiatrist, or psychologist, as appropriate. The municipality shall pay all other costs.

(f) The commission may not appoint a person to serve on a board appointed under Subsection (d) if the person receives any compensation from the municipality, other than compensation for the person's services as a board member.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Uribe moved to concur in the House amendment to **S.B. 268.**

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Parker, Parmer, Washington.

SENATE BILL 1697 WITH HOUSE AMENDMENT

Senator Zaffirini called **S.B. 1697** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Amendment - Hinojosa

Amend **S.B. 1697** as follows:

In Section 3, page 3, line 25, add after the end of the sentence "This section also does not apply to programs that are provided by the Texas Youth Commission."

The amendment was read.

On motion of Senator Zaffirini and by unanimous consent, the Senate concurred in the House amendment to **S.B. 1697** viva voce vote.

SENATE BILL 1668 WITH HOUSE AMENDMENTS

Senator Zaffirini called **S.B. 1668** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Floor Amendment No. 1 - F. Hill

Amend **S.B. 1668**:

1. Delete Section 2 on pages 2, 3 and 4.
2. Amend page 4 by inserting a period after the word "prevention" on line 26 and deleting the balance of the sentence.
3. On page 5, delete sentence starting on line 19 through line 25.
4. On page 6, delete Section 6b, lines 8 through 15.
5. On page 6, delete Section 7 on pages 16 through 26 and page 7 lines 1 and 2.

Floor Amendment No. 2 - Smithee

Amend **S.B. 1668** as follows:

On page 11, after line 10, insert the following:

"Sec. 13. Nothing in this act applies to students in attendance upon a private or parochial school, which includes home schools, in accordance with Sec. 21.033 of this code."

The amendments were read.

On motion of Senator Zaffirini and by unanimous consent, the Senate concurred in the House amendments to **S.B. 1668** viva voce vote.

SENATE BILL 1698 WITH HOUSE AMENDMENTS

Senator Zaffirini called **S.B. 1698** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Floor Amendment No. 1 - Vowell

Amend **S.B. 1698** by striking Section 9 of the bill (page 9, line 21) and substituting a new Section 9 to read as follows:

SECTION 9. Section 71.01(b)(2), Family Code, is amended to read as follows:

(2) "Family violence" means:

(A) an act [~~the intentional use or threat of physical force~~] by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, or assault, or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury or assault, excluding [~~but does not include~~] the reasonable discipline of a child by a person having that duty; or

(B) abuse, as that term is defined by Sections 34.012(1)(C), (E), and (G) of this code, by a member of a family or household toward a child of the family or household.

Floor Amendment No. 2 - Larry

Amend **S.B. 1698**, on page 10, by adding a new Section 10 to the bill to read as follows and renumbering the existing Section 10 and subsequent sections accordingly:

SECTION 10. Article 4, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 4.17 to read as follows:

Sec. 4.17. STATE CAPITOL AS A SAFE PLACE FOR RUNAWAYS. (a) In this section:

(1) "Youth" means a person under 18 years of age.

(2) "Safe Place" means a place that provides short-term crisis-oriented assistance and services to runaway youth.

(b) The state capitol is designated a Safe Place for runaway youth. The commission shall devise a plan to provide services and assistance to runaway youth seeking services at the state capitol following standards set by national organizations with expertise in services for runaway youth, including the Project Safe Place Program.

The amendments were read.

On motion of Senator Zaffirini and by unanimous consent, the Senate concurred in the House amendments to **S.B. 1698** viva voce vote.

SENATE BILL 1677 WITH HOUSE AMENDMENT

Senator Zaffirini called **S.B. 1677** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Local and Consent Calendars
Committee Amendment - Hinojosa

Amend **S.B. 1677** as follows:

On page 2, between lines 9 and 10, insert subsection (u) to read as follows:

(u) A political subdivision or an agency of the state may not enact an ordinance or rule that requires a business establishment to display abusable glue or aerosol paint in a manner that makes the abusable glue or aerosol paint accessible to patrons of the business only with the assistance of personnel of the business. This subsection does not apply to an ordinance or rule that was enacted before September 1, 1989.

The amendment was read.

On motion of Senator Zaffirini and by unanimous consent, the Senate concurred in the House amendment to **S.B. 1677** viva voce vote.

SENATE BILL 1527 WITH HOUSE AMENDMENT

Senator Zaffirini called **S.B. 1527** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment - McDonald

Amend **S.B. 1527** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Chapter 112, Human Resources Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. OFFICE FOR THE PREVENTION OF DEVELOPMENTAL DISABILITIES

Sec. 112.041. PURPOSE AND POLICY.

(1) The purpose of this Act is to minimize the economic and human losses in Texas caused by preventable disabilities through the establishment of a joint private-public initiative called the Office for the Prevention of Developmental Disabilities.

(2) The legislature finds there is a strong need for a unified, comprehensive prevention effort in the State of Texas. Many state agencies, as well as private organizations and local public agencies, are involved in prevention activities that can reduce the incidence and severity of developmental disabilities. However, a coordinated statewide plan that identifies and consolidates research findings and prevention activities has yet to be developed.

(3) The legislature further finds that by establishing a mechanism by which prevention activities can be better coordinated and needed prevention programs can be initiated, the State of Texas will be making an important investment in Texas's future.

Sec. 112.042. DEFINITIONS. In this subchapter:

(1) "Developmental disability" means a severe, chronic disability that:

(A) is attributable to a mental or physical impairment or to a combination of a mental and physical impairment;

(B) is manifested before a person reaches the age of 22;

(C) is likely to continue indefinitely;

(D) results in substantial functional limitations in three or more major life activities, including:

(i) self-care;

(ii) receptive and expressive language;

(iii) learning;

(iv) mobility;

(v) self-direction;

(vi) capacity for independent living; and

(vii) economic sufficiency; and

(E) reflects the person's needs for a combination and sequence of special interdisciplinary or generic care, treatment, or other lifelong or extended services that are individually planned and coordinated.

(2) "Executive committee" means the executive committee of the Office for the Prevention of Developmental Disabilities.

(3) "Office" means the Office for the Prevention of Developmental Disabilities.

Sec. 112.043. OFFICE FOR THE PREVENTION OF DEVELOPMENTAL DISABILITIES. The Office for the Prevention of Developmental Disabilities is established.

Sec. 112.044. DUTIES. The office shall:

(1) educate the public and attempt to promote sound public policy regarding the prevention of developmental disabilities;

(2) identify, collect, and disseminate information and data concerning the causes, frequency of occurrence, and preventability of developmental disabilities;

(3) work with state agencies and other entities to develop a coordinated long-range plan to effectively monitor and reduce the incidence or severity of developmental disabilities;

(4) promote and facilitate the identification, development, coordination, and delivery of needed prevention services;

(5) solicit, receive, and spend grants and donations from public, private, state, and federal sources;

(6) identify and encourage establishment of needed reporting systems to track the causes and frequencies of occurrence of developmental disabilities;

(7) develop, operate, and monitor task forces to address the prevention of specific targeted developmental disabilities;

(8) monitor and assess the effectiveness of state agencies to prevent developmental disabilities;

(9) recommend the role each state agency should have with regard to prevention of developmental disabilities;

(10) facilitate coordination of state agency prevention services and activities; and

(11) encourage cooperative, comprehensive, and complementary planning among public, private, and volunteer individuals and organizations engaged in prevention activities, providing prevention services, or conducting related research.

Sec. 112.045. EXECUTIVE COMMITTEE. (a) The executive committee is the governing body of the office.

(b) The executive committee is composed of nine members who have expertise in the field of developmental disabilities, of which three are appointed by the governor, three are appointed by the lieutenant governor, and three are appointed by the speaker of the house of representatives.

(c) The members serve two-year terms that expire on February 1. Executive committee members receive no compensation but are entitled to reimbursement of actual and necessary expenses incurred in the performance of their duties.

(d) The members of the executive committee annually shall elect one member to serve as presiding officer.

(e) The executive committee shall meet at least quarterly and shall adopt bylaws for the conduct of the meetings.

(f) Any actions taken by the executive committee must be approved by a majority vote of the members present.

(g) The executive committee shall establish policies and procedures to implement this subchapter.

Sec. 112.046. BOARD OF ADVISORS. (a) The executive committee may appoint a board of advisors composed of the following persons:

(1) representatives of government agencies that are responsible for prevention services for specified targeted disabilities and that contract with the office to provide those services;

(2) representatives of consumer groups, foundations, or corporations that contract for or donate to the office for prevention services for specific targeted disabilities;

(3) private citizens who volunteer services or donate to the office for prevention services for specific targeted disabilities; and

(4) other persons whose assistance the executive committee considers necessary to implement the purposes of this subchapter.

(b) The Board of Advisors may serve on task forces, solicit donations and grants, and perform any other duties, as assigned by the executive committee.

Sec. 112.047. EXECUTIVE DIRECTOR. (a) The executive committee may hire an executive director to serve as the chief executive officer of the office and to perform the administrative duties of the office.

(b) The executive director serves at the will of the executive committee.

(c) The executive director may hire staff within guidelines established by the executive committee.

Sec. 112.048. TASK FORCES. (a) The executive committee shall establish guidelines for:

(1) selecting targeted disabilities;

(2) assessing prevention services needs; and

(3) reviewing task force plans, budgets, and operations.

(b) The executive committee shall create task forces made up of members of the board of advisors to plan and implement prevention programs for specifically targeted developmental disabilities. A task force operates as an administrative division of the office and can be abolished when it is ineffective or is no longer needed.

(c) A task force shall:

(1) develop a plan designed to reduce the incidence of a specifically targeted disability;

(2) prepare a budget for implementing a plan;

(3) arrange for funds through:

(A) contracts for services from participating agencies;

(B) grants and gifts from private persons and consumer and advocacy organizations; and

(C) foundation support; and

(4) submit the plan, budget, and evidence of funding commitments to the executive committee for approval.

(d) A task force shall regularly report to the executive committee, as required by the committee, the operation, progress, and results of the task force's prevention plan.

Sec. 112.049. EVALUATION. (a) The office shall identify or encourage the establishment of needed statistical bases for each targeted group against which the office can measure how effectively a task force program is reducing the frequency or severity of a targeted developmental disability.

(b) The executive committee shall regularly monitor and evaluate the results of task force prevention programs.

Sec. 112.050. GRANTS. (a) The executive committee may apply for and distribute private, state, and federal funds to implement prevention policies set by the executive committee.

(b) The executive committee shall establish criteria for application and review of funding requests and accountability standards for recipients. The executive committee may adjust its criteria as necessary to meet requirements for federal funding.

(c) The executive committee may not submit a legislative appropriation request for general revenue funds.

Sec. 112.051. REPORTS TO LEGISLATURE. The office shall submit by February 1 of each odd-numbered year biennial reports to the legislature detailing findings of the office and the results of task force prevention programs and recommending improvements in the delivery of developmental disability prevention services.

Sec. 112.052. APPLICATION OF SUNSET ACT. The Office for the Prevention of Developmental Disabilities is subject to the Texas Sunset Act (Chapter 325, Government Code). Unless continued in existence as provided by that chapter, the office is abolished and this subchapter expires September 1, 1995.

SECTION 2. Under Section 112.048, Human Resources Code, as added by this Act, the executive committee initially shall create three task forces, one of which shall develop a prevention plan for developmental disabilities that result from each of the following:

(1) teenage substance abuse;

(2) teenage pregnancy; and

(3) teenage head injuries.

SECTION 3. Of the initial appointments to the executive committee:

(a) four shall be for a term of one year: the governor shall have two appointments; the lieutenant governor shall have one appointment and the speaker of the house of representatives shall have one appointment,

(b) five shall be for two-year terms: the governor shall have one appointment; the lieutenant governor shall have two appointments and the speaker of the house of representatives shall have two appointments.

SECTION 4. This Act takes effect September 1, 1989.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Zaffirini and by unanimous consent, the Senate concurred in the House amendment to **S.B. 1527** viva voce vote.

CONFERENCE COMMITTEE ON HOUSE BILL 1947

Senator Brown called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 1947** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on **H.B. 1947** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Brown, Chairman; Armbrister, Leedom, Montford and Henderson.

MOTION TO ADJOURN

On motion of Senator Glasgow, the Senate agreed to adjourn, upon the completion of administrative duties, until 9:30 a.m. tomorrow.

CONFERENCE COMMITTEE REPORT
SENATE BILL 1517

Senator Brooks submitted the following Conference Committee Report:

Austin, Texas
May 28, 1989

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 1517** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

BROOKS	SAUNDERS
JOHNSON	KUEMPEL
URIBE	VALIGURA
ZAFFIRINI	ALEXANDER
WHITMIRE	
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the registration and permitting requirements of certain municipal solid waste management facilities, to establishing a waste minimization and recycling office within the Texas Department of Health, and to the regulation and taxation of persons conducting recycling activities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes) is amended by adding Sections 4B, 4C, and 4D to read as follows:

Sec. 4B. (a) A permittee or a municipal solid waste management facility that has or plans to have a recycling or waste separation facility established in conjunction with the permitted municipal solid waste management facility is not required to obtain for that recycling or waste separation facility a separate permit from the department or apply for an amendment to an existing permit issued by the department. If a permit is otherwise required, the permit proceeding shall be expedited by the department if the applicant is seeking a permit for a solid waste management facility that employs an innovative, high technology method of waste disposition and recycling.

(b) A facility covered under this section must register with the department in accordance with board of health rules and comply with rules adopted by the board of health under this Act.

Sec. 4C. (a) The department may exempt from permit requirements a municipal solid waste management facility that:

(1) is used in the transfer of municipal solid waste from a service area with a population of less than 5,000 inhabitants according to the most recent federal decennial census, to a solid waste processing or disposal site; and

(2) complies with requirements established by board of health rule that are necessary to protect the public's health and the environment.

(b) The board of health may adopt reasonable rules that are necessary to administer this section.

Sec. 4D. (a) The department shall establish and administer a waste minimization and recycling office within the department that provides technical assistance to local governments concerning waste minimization and recycling.

(b) The department shall work in conjunction with the Texas Department of Commerce to pursue development of markets for recycled materials, including composting products.

SECTION 2. Section 2, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended by adding Subdivision (33) to read as follows:

(33) "Recycling" means the legitimate use, reuse, or reclamation of solid waste.

SECTION 3. Subchapter B, Chapter 171, Tax Code, is amended by adding Section 171.085 to read as follows:

Sec. 171.085. EXEMPTION; RECYCLING OPERATION. A corporation engaged solely in the business of recycling sludge, as defined by Section 2, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is exempted from the franchise tax.

SECTION 4. This Act takes effect September 1, 1989, except that Section 3 of this Act takes effect September 1, 1991.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT
SENATE BILL 895

Senator Harris submitted the following Conference Committee Report:

Austin, Texas
May 28, 1989

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 895** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

HARRIS	CAIN
MONTFORD	F. HILL
URIBE	WATKINS
BROOKS	McDONALD
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to admissions to, programs at, and management of certain components of The University of Texas System, including The University of Texas at Dallas, The University of Texas of the Permian Basin, and The University of Texas—Pan American—Brownsville.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. THE UNIVERSITY OF TEXAS AT DALLAS

SECTION 1.01. Chapter 70, Education Code, is amended by adding Section 70.08 to read as follows:

Sec. 70.08. UNDERGRADUATE ADMISSIONS. (a) The Board of Regents of The University of Texas System may provide for the admission and enrollment of not more than 2,000 entering freshman students at The University of Texas at Dallas.

(b) The board may provide for the admission of undergraduate transfer students with less than 54 semester hours of college credit at The University of Texas at Dallas as provided by this section. The board shall control the admission and enrollment of entering freshmen and of undergraduate transfer students with less than 54 semester hours of college credit in a manner that ensures that the enrollment of students classified as freshmen and sophomores at the institution does not exceed 5,000, except as provided by Subsection (c) of this section.

(c) For each academic year, in addition to the enrollments targeted by the academic plan for that academic year, The University of Texas at Dallas may admit an additional number of students equal to no more than four percent of the targeted number if such students are classified as sophomores, have earned more than 29 but less than 54 semester hours of college credit at a community college in the Dallas or the Collin County Community College District, and otherwise meet the minimum criteria for transfer admission to The University of Texas at Dallas. This subsection does not limit or otherwise affect the enrollment of students at The University of Texas at Dallas who have earned semester credit hours at a community college in the Dallas or the Collin County Community College District

and who otherwise compete successfully for admission and enrollment at The University of Texas at Dallas.

(d) It is the intent of the legislature that minority students be full participants in the educational opportunities created by the admission of lower-division undergraduate students to The University of Texas at Dallas primarily in programs leading to degrees in natural sciences, mathematics, and engineering. Therefore, until such time as the minority student population at The University of Texas at Dallas is fully representative of the state's minority populations, the board shall cause to be set aside for each academic year from among the enrollments targeted by the academic plan for that academic year a number of enrollments equal to at least five percent of the targeted number, such reserved enrollments to be open exclusively to minority students.

(e) The board shall develop policies for undergraduate admission to The University of Texas at Dallas that emphasize the admission and enrollment of lower-division students who intend to enroll in academic programs leading to degrees in natural sciences, mathematics, or engineering. Nothing in this Act shall prohibit the senior institutions of higher education in the North Texas region from creating and developing undergraduate and graduate programs in the areas of natural sciences, mathematics, and engineering.

(f) At a minimum, in addition to other qualitative criteria that the board may establish, the board shall provide that the admission criteria for entering freshmen and for transfer students with less than 54 semester hours of college credit be no less stringent than the criteria for admission to The University of Texas at Austin for those students.

(g) The board shall continue to provide for the admission at The University of Texas at Dallas of undergraduate transfer students with 54 or more semester hours of college credit. The admission criteria effective on March 1, 1989, for those students may continue in effect but may be amended from time to time by the board. In amending those criteria, the board shall consider that one of the primary missions of The University of Texas at Dallas is to serve those students who have received freshman-level and sophomore-level undergraduate instruction at community colleges located in the surrounding area.

(h) This section does not affect the criteria for admission to graduate programs at The University of Texas at Dallas.

(i) In this section, the number of students is determined by head count.

SECTION 1.02. (a) The University of Texas at Dallas may admit freshman and sophomore students beginning with the summer sessions, 1990. Notwithstanding Subsections (a) and (b), Section 70.08, Education Code, for the period beginning with the summer sessions, 1990, and continuing through the summer sessions, 1991, and for the academic year beginning with the fall semester, 1991, the board shall cause the academic plan for The University of Texas at Dallas to restrict the total enrollment of lower-division students to no more than 1,040 for each such period.

(b) It is the intent of the legislature that any general revenue funds appropriated to The University of Texas at Dallas for costs related to the implementation of this Act not exceed $500,000 for each year of the fiscal biennium beginning September 1, 1989.

(c) For the fiscal biennium that follows the fiscal biennium beginning September 1, 1989, in addition to the funding that is provided by the regular general academic institution formulas, The University of Texas at Dallas is entitled to the incremental funding for enrollments in junior-level and senior-level courses that is provided by the upper-level formulas to those institutions that enroll only junior-level and senior-level undergraduate students, and the Texas Higher Education Coordinating Board shall take that entitlement into account in preparing its formula recommendation under Section 61.059, Education Code.

ARTICLE 2. THE UNIVERSITY OF TEXAS—PAN AMERICAN—BROWNSVILLE

SECTION 2.01. Chapter 77, Education Code, is amended by adding Section 77.36 to read as follows:

Sec. 77.36. The Board of Regents of The University of Texas System shall maintain and promote the evolution and development of the Brownsville center into a degree-granting institution. The board shall assist the center to meet all the requirements imposed by the Texas Higher Education Coordinating Board by 1996 or at such time as it is justified, whichever is sooner.

ARTICLE 3. THE UNIVERSITY OF TEXAS OF THE PERMIAN BASIN

SECTION 3.01. Section 72.01, Education Code, is amended to read as follows:

Sec. 72.01. ESTABLISHMENT. (a) The Board of Regents of The University of Texas System shall establish and maintain a fully state-supported coeducational institution of higher education to be known as The University of Texas of the Permian Basin. The institution is organized to teach primarily [~~only~~] junior-, senior-, and graduate-level courses but, with the prior approval by the Texas Higher Education Coordinating Board, the Board of Regents may establish four-year undergraduate degree programs for students majoring in engineering and energy-related sciences; provided, however, that four-year undergraduate degree programs for engineering and energy-related sciences may not be established to be effective prior to the fall semester, 1991 [~~approved by the Coordinating Board, Texas College and University System~~].

(b) In the event such four-year programs for students majoring in engineering and energy-related sciences are approved by the Texas Higher Education Coordinating Board and the Board of Regents, the resources for such programs shall be divided equally between the main campus in Odessa and the Center for Energy and Economic Diversification in Midland.

ARTICLE 4. MISCELLANEOUS PROVISIONS

SECTION 4.01. This Act takes effect September 1, 1989, except that Section 1.01 of this Act takes effect May 16, 1990.

SECTION 4.02. (a) Notwithstanding any other provision of this Act, implementation of each of the preceding articles is contingent on the prior approval of the Texas Higher Education Coordinating Board and shall be granted only after the coordinating board makes a determination that the article sought to be implemented meets the usual and customary criteria employed by the coordinating board, including but not limited to those applicable elements cited in Chapter 61, Subchapter C, Education Code. It is the intent of the legislature that no public funds may be expended on any matter requiring coordinating board approval under the terms of this section or until approval by the coordinating board is granted; provided, however, that this provision does not prohibit the governing board from accepting or expending any private gift, grant, or donation or from using public funds for presentations to the coordinating board under this section.

(b) It is the intent of the legislature that such a determination be made in a fair and equitable manner and that the review required herein be conducted in a manner consistent with the current statutory authority of the Texas Higher Education Coordinating Board. The passage of this legislation is in no way intended to either encourage or discourage a particular result or decision by the coordinating board.

SECTION 4.03. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

CONGRATULATORY RESOLUTIONS

S.R. 772 - By Armbrister: Extending congratulations to the employees and management of the Rosenberg Frito Lay plant on their admirable safety record.

S.R. 774 - By Barrientos: Extending congratulations to The University of Texas Lady Longhorns for their momentous 1988-1989 basketball season.

S.R. 776 - By Brown: Commending the Southwest Texas State University Strutters for their dedication and pursuit of excellence and declaring December 2, 1989 as Southwest Texas State University Strutters Day in Texas.

S.R. 777 - By Brown: Commending Mrs. Gladyne Slade for her superb contributions to the educational system of Texas and extending best wishes to her for a rich and rewarding retirement.

S.R. 779 - By Montford: Commending the magnificent contributions of Dr. Elizabeth G. "Bess" Haley to Texas Tech University and the people of Texas.

S.R. 780 - By Parmer: Extending congratulations to the St. John Missionary Baptist Church of Mosier Valley on the occasion of its 115th anniversary.

S.R. 781 - By Parmer: Commending the North Fort Worth Historical Society for its preservation efforts on behalf of the historic Fort Worth Livestock Exchange Building.

S.R. 782 - By Parker: Extending congratulations to Mr. and Mrs. Alvin Gentil on their 64th wedding anniversary.

S.R. 783 - By Parker: Commending Commander James L. Robinson for his dedicated service to the nation and expressing sincere appreciation to him for his exemplary record of military service.

S.R. 786 - By Leedom: Extending congratulations to Mr. and Mrs. Ronald K. Kirk on the recent addition of Miss Elizabeth Alexandra Kirk to their family.

S.R. 787 - By Washington: Commending Don Snow for the diligence, dedication, and effectiveness he applies to Project RIO.

S.R. 788 - By Washington: Expressing appreciation to office manager Charles Johnson and the staff of the Houston office of Project RIO for their meaningful contributions.

S.R. 789 - By Washington: Commending the Texas Employment Commission and the staff of Project RIO for their commitment to the success of the program.

S.R. 790 - By Uribe: Extending commendation and gratitude to the president of Pan American University in Brownsville, Dr. Homer Penag, for his dedication to the excellence of the University.

S.R. 792 - By Dickson: Commending Vernon B. Rucker for his lifetime of work for the public good and extending him best wishes for a fruitful and rewarding retirement.

S.R. 793 - By Green: Expressing appreciation to Merle L. Wismer for his varied and worthwhile contributions to the citizens of his community.

S.R. 794 - By Sims: Extending congratulations to Javier V. Pardo for graduating from the Texas School for the Deaf.

ADJOURNMENT

Pursuant to a previous motion by Senator Glasgow, the Senate at 9:38 p.m. adjourned until 9:30 a.m. tomorrow.